

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1080

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B^{8cc}
P/S

DOCKET #76-1080

UNITED STATES OF AMERICA,

Appellee,

vs.

ALLAN B. DOUGLASS,

Appellant,

On Appeal from Final Judgment of
the United States District Court
for the Southern District of New
York
Sat Below: Knapp, U.S.D.J., and
a Jury.

APPENDIX

BARRY S. TURNER
Attorney for Appellant
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Brooklyn, N.Y. 11241
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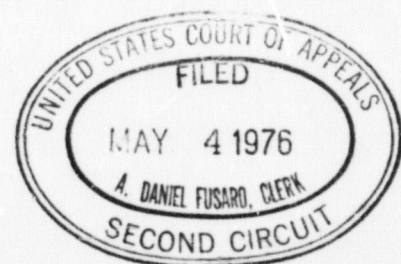


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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE KNAPP

75 CRIM. 294

D. C. Form No. 100 Rev.

TITLE OF CASE

THE UNITED STATES

vs.

1. ALLAN B. DOUGLASS-1-9
2. JOHN T. TWONEY-10-16
3. JOSEPH D'ERCOLE-15&16
4. PASQUALE COCCO-17&18
5. PETER LA FROSCIA-20-24
6. ANTHONY ACARINO-17-19

ATTORNEYS

For U. S.:

Robert Gold, AUSA.
791-0038

For Defendant:

- (3) Robert Mitchell
51 Chamber St NYC 10021
Wo 2-0675
- (1) Barry Dana
16 Court St, Bklyn, N.Y.
11241 tele: 875-2400

(03) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISH
J.S. 2 mailed	Clerk				
J.S. 3 mailed /,	Marshal				
Violation	Docket fee				
Title 18					
Sec. 201(b), (c)					
Bribery .					
(Twenty-four Counts)					

DATE

PROCEEDINGS

- 3-19-75 Filed indictment.
- 3-24-75 Superseding 75Cr 272 and referred to Judge Knapp. Brieant, J.
- 03-24-75 Joseph D'Ercole- filed appearance bond in the sum of \$50,000.
- 03-26-75 J. D'Ercole- filed notice of appearance of atty.
- 04-02-75 Filed order that deft. P. La Froscia be confined at the F.D.H.N.Y.C. until further notice or order, etc. Knapp, J. mm
- 03-24-75 A. Douglass (atty. present) pleads not guilty. Motion ret. 15 days. Bail cont'd. at \$25,000. P.R.B. Case assigned to Judge Knapp.
- J. Twomey (atty. present) pleads not guilty. Bail cont'd. as fixed at \$25,000. P.R.B.
- J. D'Ercole (atty. present) pleads not guilty. Bail fixed by Court at \$50,000. P.R.B. secured by \$1,000. cash or surety to be co-signed by wife, daughter and nephew. Deft. remanded in lieu of bail.
- over-

DATE	PROCEEDINGS
3-24-75	P. Cocco (atty. present) pleads not guilty. Cont'd. on bail fixed at \$25,000. P.R.B. A. Acarino (atty. present) pleads not guilty. Bail cont'd. at \$25,000. P.R.B. secured by \$2,500 cash or surety. P. La Froschia (atty. present) pleads not guilty. Bail fixed by Magistrate cont'd at \$25,000. Deft. remanded in lieu of bail.
04-08-75	Filed deft. P. La Froschia's notice of motion re: dismissal, severance, etc. ref: 4-25-75.
04-10-75	Filed Notice of motion of Allan Douglass re: copy of statements, etc.
05-22-75	Deft. Douglass' (atty. Stephen Gillers only present) appl. for reduction of bail is granted. Bail reduced to \$25,000. P.R.B. secured by \$1,000. cash. Knapp, J.
05-30-75	Filed Govt.'s affdvt. re: response to an appl. by deft. LaFroschia for severance, etc.
05-29-75	A. Douglas- filed remand dated 5-22-75.
05-30-75	Peter LaFroschia- filed appearance bond in the sum of \$10,000.
6-11-75	P. La Froschia- filed remand dated 5-22-75.
8-04-75	Filed deft. P. La Forscia's notice to disclose (also filed in 75 Cr. 272)
09-03-75	Filed Govt.'s notice of readiness for trial.
0-20-75	J. D'Ercole- filed remand dated 3-24-75.
12-01-75	Deft. LaFroschia & atty. (Stephen Gillers) present. Deft. pleads guilty to count 1 of a superceding information. P.S.I. ordered. Sentence adj. to 1/14/76 at 4:30. Bail conditions cont'd.--Knapp, J.
12-8-75	Allan B. Douglass- filed P.R.B. in the sum of \$25,000. unsecured.
12-2-75	Deft. Douglass (atty. Barry Turner present) jury impanelled and sworn. Case proceeds to trial as to this deft. only.
12-3-75	Trial cont'd.
12-4-75	Trial cont'd.
12-5-75	Trial cont'd. and concluded. Jury finds the deft. Douglass guilty on counts 4 & 5, not guilty on cts 1-3, 6-9. P.S.I. Ordered. Sentence adj. to 1-20-76 at 4:30. Bail conditions amended as follows. P.R.B. cont'd on condition that deft.'s wife co-sign by 12-8-75. Knapp, J.
01-27-76	Allan B. Douglas- filed affdvt. re; appl. for leave to file appeal in forma pauperis. So Ordered Knapp, J. m/n
01-21-76	ALLAN B. DOUGLASS- (atty. present) Filed Judgment- deft. is committed to the custody of the Atty. Gen'l. for Impr. 2 yrs. on ea. of cts. 4 & 5 conc. Deft. to surrender 2-10-76, etc. Knapp, J. issued all copies.

-cont'd. on next page-

DATE	PROCEEDINGS
02-03-76	Peter LaFroschia-filed CJA 20 approval for payment of fees of atty. Stephen Gillers 500 Fifth Avenue, N.Y.C. 10007 tele: (212) 354-5454 Knapp, J. issued all copies.
02-17-76	Filed Govt. 's requests to charge.
02-17-76	Filed Govt. 's requests for the voir dire.
02-17-76	Filed Govt. memo. of law re: support of suppl. request to charge on lesser-included gratuity offense.
	File commitment & order of arrest. Deft delivered to [illegible]
02-26-76	Deft. Acorino (atty. J. Curley present) deft. pleads guilty to superseding information 76 Cr. 198 (W.K) P.S.I. ordered. Sentence adj. to 4-12-76 at 4:30. Bail conditions set previous indictment cont'd/ Knapp, J.
03-26-76	A. Acarino-filed documents forwarded by Magistrate Hartenstine: 3-6-75 complaint filed, warrant issued. 3-7-75 deft present. Legal Aid assigned Hearing set for 3/14/75, bail-\$25,000. PRB secured by \$2,500-released on bail 3-7-75.
03-26-76	A. Douglas-filed documents forwarded by Magistrate Hartenstine: 3-6-75 complaint filed, warrant issued. (atty. Bert Koshler) 125-10 Queens Blvd. NY Hearing set for 3-14-75 bail-\$25,000. PRB without security, address: 114 E. 71st St. Bklyn, N.Y. Deft. present. 3-14-75-Notice of Appearance filed BARRY TARRAN, 16 Court St. Bklyn, NY 11241. deft. released on bail-3-7-75
03-26-76	J. Twomey- filed documents forwarded by Magistrate Hartenstine: 3-6-75 complaint filed, warrant issued. Deft. present. Hearing set for 3/14/75. Bail-\$25,000 PRB without security. released on bail-3-7-75.
03-26-76	J. D'Ercole-filed documents forwarded by Magistrate Hartenstine: 3-6-75 complaint filed, warrant issued. Deft present. Hearing set for 3-14-75, deft remanded into custody of US Marshal in lieu of \$25,000 cash or surety, released on bail-3-6-75 3-19-75 -Notice of appearance by JAMES S. HANRAHAN, Esq. 202 E. 110 St. NYC
03-26-76	V. Cocco-filed documents forwarded by Magistrate Hartenstine: 3-6-75-complaint filed, warrant issued. Deft. present (atty. Stephen Flamhaft, Esq. 32 Court St. Bklyn, N.Y.) Hearing set for 3-14-75. Bail-\$25,000 PRB unsecured. deft. released on bail-3-7-75.
03-26-76	C. LaFroschia-filed documents forwarded by Magistrate Hartenstine: 3-6-75 complaint filed, warrant issued. Deft. present (atty S. Gillers-500-5th Ave. NY) Hearing set for 3-14-75. Deft remanded into custody of U.S. Marshal in lieu of \$25,000 cash or surety.
03-26-76	Filed transcript of record of proceedings, dated Dec. 2, 3, 4, 5 1975. and Jan 20, 1976.
03-24-76	Filed transcript of record of proceedings, dated 12-1-75.

DA 2

PROCEEDINGS

04-05-76 Deft. D'Froole (atty. only present, Robert Mitchell) adj. to
5-5-76 at 4:30PM. Knapp, J.

01-29-76 ALLAN B. DOUGLASS (Docketed 4-22-76) Filed notice of appeal from
Judgment of 1-21-76. Mailed copies to U.S. Atty. & deft. at Box G
Hazardville, Station, Enfield, Conn. -06082

04-22-76 Filed notice that the record on appeal has been certified and
transmitted to the U.S.C.A.

RQ:sr
n-987

VI

COUNTS ONE THROUGH NINE

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, ALLAN B. DOUGLASS, the defendant, being then a public official, as set forth in paragraph 1 of the Introduction, unlawfully, wilfully and knowingly did, directly and indirectly, corruptly ask, demand, exact, solicit, seek, accept, receive and agree to receive things of value, to wit, money in the approximate amounts set forth below, for himself and others, in return for (a) being influenced in his performance of official acts, (b) being influenced to commit and aid in committing, and to collude in, and allow, a fraud, and make opportunity for the commission of a fraud, on the United States, and (c) being induced to do and omit to do acts in violation of his official duties, to wit, in return for permitting certain federal prisoners confined at the Woodward FCTC to be absent from the Woodward FCTC at and during certain times when their presence therein was required by regulations of the United States Bureau of Prisons:

<u>Count</u>	<u>Date</u>	<u>Amount</u>
1	February 6, 1975	\$10
2	February 13, 1975	\$50
3	February 25, 1975	\$25
4	February 27, 1975	\$25
5	In and around December 1974	\$50
6	In and around February 1975	\$10
7	In and around February 1975	\$10
8	In and around February 1975	\$10
9	February 27, 1975	\$ 5

COUNTS TEN THROUGH FOURTEEN

The Grand Jury further charges:

On or about the dates hereinafter set forth, among others, in the Southern District of New York, JOHN T. TWOMEY, the defendant, being a public official, as set forth in paragraph 2 of the Introduction, unlawfully, wilfully and knowingly did, directly and indirectly, corruptly ask, demand, exact, solicit, seek, accept, receive and agree to receive things of value, to wit, money in the approximate amounts set forth below, for himself and others in return for (a) being influenced in his performance of official acts, (b) being influenced to commit and aid in committing, and to collude in, and allow, a fraud, and make an opportunity for the commission of a fraud, on the United States, and (c) being induced to do and to omit to do acts in violation of his official duties, to wit, in return for permitting certain federal prisoners confined at the Woodward FCTC to be absent from the Woodward FCTC at and during certain times when their presence therein was required by regulations of the United States Bureau of Prisons:

<u>Count</u>	<u>Date</u>	<u>Amount</u>
10	January 22, 1975	\$50
11	January 27, 1975	\$30
12	February 4, 1975	\$25
13	February 14, 1975	\$25
14	February 20, 1975	\$25

(Title 18, United States Code, Section 201(c).)

COUNTS FIFTEEN THROUGH SIXTEEN

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, JOSEPH D'ERCOLE, the defendant, unlawfully, wilfully and knowingly, did, directly and indirectly, corruptly, give, offer and promise things of value, to wit, money in the approximate amounts set forth below, to JOHN T. TWOMEY, a public official, as set forth in paragraph 2 of the Introduction, with intent (a) to influence official acts; (b) to influence said public official to commit and aid in committing, and collude in, and allow a fraud, and make an opportunity for the commission of a fraud, on the United States; and (c) to induce said public official to do and to omit to do acts in violation of his lawful duty, that is, with intent to influence and induce JOHN T. TWOMEY to permit the defendant JOSEPH D'ERCOLE to be absent from the Woodward FCTC at and during cert in times when his presence therein was required by regulations of the United States Bureau of Prisons:

<u>Count</u>	<u>Date</u>	<u>Amount</u>
15	February 18, 1975	\$20
16	February 25, 1975	\$20

(Title 18, United States Code, Section 201(b).)

COUNTS SEVENTEEN THROUGH EIGHTEEN

The Grand Jury further charges:

On or about the dates hereinafter set forth,
in the Southern District of New York, PASQUALE COCCO and
ANTHONY ACARINO, the defendants, unlawfully, wilfully
and knowingly, did, directly and indirectly, corruptly give,
offer and promise things of value, to wit, money in the

approximate amounts set forth below, to JOHN T. TWOMEY, a public official, as set forth in paragraph 2 of the Introduction, with intent (a) to influence official acts; (b) to influence said public official to commit and aid in committing, and collude in, and allow a fraud, and make an opportunity for the commission of a fraud, on the United States; and (c) to induce said public official to do and to omit to do acts in violation of his lawful duty, that is, with intent to influence and induce JOHN T. TWOMEY to permit the defendants PASQUALE COCCO and ANTHONY ACARINO to be absent from the Woodward ECTC at and during certain times when their presence therein was required by regulations of the United States Bureau of Prisons:

<u>Count</u>	<u>Date</u>	<u>Amount</u>
17	February 21, 1975	\$20
18	February 25, 1975	\$20

(Title 18, United States Code, Section 201(b) and 2.)

COUNT NINETEEN

The Grand Jury further charges:

On or about the date hereinafter set forth, in the Southern District of New York, ANTHONY ACARINO, the defendant, unlawfully, wilfully and knowingly, did, directly and indirectly, corruptly give, offer and promise things of value, to wit, money in the approximate amount set forth below, to JOHN T. TWOMEY, a public official, as set forth in paragraph 2 of the Introduction, with intent (a) to influence official acts; (b) to influence said public official to commit and aid in committing, and collude in, and allow a fraud, and make an opportunity for the commission of a fraud, on the United States; and (c) to induce said public

official to do and to omit to do acts in violation of his lawful duty, that is, with intent to influence and induce JOHN T. TWOMEY to permit the defendant ANTHONY ACARINO to be absent from the Woodward FCTC at and during certain times when his presence therein was required by regulations of the United States Bureau of Prisons:

<u>Count</u>	<u>Date</u>	<u>Amount</u>
19	February 24, 1975	\$20

(Title 18, United States Code, Section 201(b).)

COUNTS TWENTY THROUGH TWENTY-FOUR

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, PETER LA PROSCIA, the defendant, unlawfully, wilfully and knowingly did, directly and indirectly, corruptly give, offer and promise things of value, to wit, money in the approximate amounts set forth below, to ALLAN B. DOUGLASS, a public official, as set forth in paragraph 1 of the Introduction, with intent (a) to influence official acts; (b) to influence said public official to commit and aid in committing, and collude in, and allow a fraud, and make an opportunity for the commission of a fraud, on the United States; and (c) to induce said public official to do and to omit to do acts in violation of his lawful duty, that is, with intent to influence and induce ALLAN B. DOUGLASS to permit the defendant PETER LA PROSCIA to be absent from the Woodward FCTC at and during certain times when his presence therein was required by regulations of the United States Bureau of Prisons:

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<u>Count</u>	<u>Date</u>	<u>Amount</u>
20	In and around December, 1974	\$50
21	In and around February, 1975	\$10
22	In and around February, 1975	\$10
23	In and around February, 1975	\$10
24	February 27, 1975	\$5

(Title 18, United States Code, Section 201(b).)

FOREMAN

Paul J. Curran
PAUL J. CURRAN
United States Attorney

2 THE COURT: So noted.

3 Q Do you know a man named John Twomey also known as
4 Jack Twomey?

5 A No.

6 Q Mr. La Froscia, let me direct your attention
7 to the holiday period around Christmas, New Year's,
8 December, 1974, January, 1975.

9 Did you have a conversation around that time
10 with Mr. Douglass?

11 A Yes.

12 Q To the best of your recollection, when did this
13 conversation occur?

14 A Some time right after the New Year's holidays.

15 Q And what was the latest date, do you think?
16 Was it the first week or how late?

17 A First week I'd say.

18 Q Where did this conversation take place?

19 A In Mr. Douglass' office.

20 Q Do you know what time it took place, do you
21 recall?

22 A Between the hours of 4 and 11 is all I can
23 remember.

24 Q Who was present at this time?

25 A Just me and Mr. Douglass.

Q To the best of your recollection, what did you say to Mr. Douglass and what did he say to you?

A Well, I told him that I was having --

Q Excuse me, Mr. La Froscia, please keep your voice up now.

A I told him that I was having a hard time getting to and from the Halfway House, and I wanted to know if there is anything that can be done; and at this time I put an envelope on the desk with some money, and with this Mr. Douglass said "Well, we will see what we can do" and then I left.

Q Did you see what happened with this envelope?

A I am pretty sure he picked it up.

THE COURT: No, did you see.

MR. TURNER: Objection.

THE COURT: No. Not you're pretty sure. Did you see?

THE WITNESS: Yes.

Q What did you see happened to the envelope?

A I seen Mr. Douglass pick it up. That's about all.

Q What was in the envelope?

A \$50.

Q Where did you stay that night?

A At the Halfway House.

1 Q Did you have a conversation with Mr. Douglass
2 the next night?
3

4 A Yes.

5 Q And to the best of your recollection, what did
6 you say to -- what time did this conversation the next
7 night occur, if you recall?

8 A Between 4 and 11.

9 Q Where was it?

10 A In the Halfway House, Mr. Douglass' office.

11 Q Who was present?

12 A Just me and Mr. Douglass.

13 Q To the best of your recollection, what did you
14 say to Mr. Douglass and what did he say to you?

15 A Well, I just came in and I signed the book,
16 and my in time, and with that he told me I could sign
17 out at the same time and he initialed it and that was it.

18 Q Then where did you go?

19 A Home.

20 Q Prior to this incident, what happened as far
21 as signing in each night when you would come in?

22 A I'd have to sign in and stay at least six hours
23 before I could sign out.

24 Q And then would anyone initial it or would any
25 staff member take no action with respect to when you signed it?

2 A Yes.

3 Mr. Douglass would initial it.

4 Q And when you left, what would happen?

5 A He would initial it. Depend on who was there
6 in the morning. If nobody was there nobody would initial.

7 Q If you left when no one was there, and therefore
8 no one initialed it, would anyone initial it for you that
9 night when you came in that you check out the morning
10 before?

11 A It was usually initialed before I came in.

12 Q By whom?

13 A Mr. Douglass usually.

14 Q After this second conversation with Mr. Douglass
15 that you just related, you say you left the center?

16 A Yes.

17 Q Did you come back that night?

18 A No.

19 Q After this conversation, what was your practice
20 with respect to coming into the center and signing in?

21 A I used to come in, sign in, and sign out at
22 the same time.

23 Q And then where would you go?

24 A Home.

25 Q Did you stay at the center any more at night?

2 A No.

3 Q Did you ever?

4 A Yes.

5 Q How often?

6 A Just when Mr. Douglass wasn't on.

7 Q Any other occasions?

8 MR. TURNER: I'm sorry, your Honor.

9 THE COURT: What was it? Would you read back that
10 last answer.

11 (Question and answer read.)

12 Q How often did that occur?

13 A Maybe once or twice.

14 Q Did you ever stay in the center again when Mr.
15 Douglass was on?

16 A No.

17 Q What hours would you come in and sign in and
18 sign out?

19 A Anywhere between the hours of 4 and 11. There
20 was no steady hour.

21 Q Did you ever come in after 11?

22 A No.

23 Q Did you ever again give Mr. Douglass any money?

24 A About two weeks later.

25 Q How much did you give him at that time?

2 A \$10.

3 Q And was there any conversation at the time?

4 A No.

5 Q Where did this incident take place?

6 A Mr. Douglass' office.

7 Q Do you remember what night of the week this was?

8 A Monday.

9 Q You are saying it was on a Monday night two
10 weeks later?

11 A It was.

12 Q And how did this come to pass that you gave
13 Mr. Douglass the money that night?

14 A So I could stay out.

15 THE COURT: He means--

16 Q What happened that night?

17 A I just came in, signed in, signed out, and I
18 gave Mr. Douglass \$10.

19 MR. TURNER: I'm sorry, he drops his voice.

20 THE COURT: He just came in signed in, signed
21 out, and gave Mr. Douglass \$10.

22 Had anybody said anything to you before you
23 gave it to him?

24 THE WITNESS: No.

25 THE COURT: Mr. Douglass isn't saying anything

2 to you.

3 THE WITNESS: No.

4 Q And was this some time in January this second
5 time?

6 A Around the middle of January.

7 Q Were you working at night at this time?

8 A Yes.

9 Q Did you tell Mr. Douglass you were working at
10 night at this time?

11 A Yes, I did.

12 Q Prior to that, had you told Mr. Douglass that
13 you were working at night?

14 A No.

15 Q After this Monday night incident, did you ever
16 again give Mr. Douglass any money?

17 A The following week.

18 Q When the following week?

19 A On Monday.

20 Q What happened in that incident?

21 A Same thing. I came in, signed in, signed out,
22 and I gave him \$10.

23 Q And after that, when was the next time, if ever,
24 that you gave Mr. Douglass any money?

25 A I don't know if this would be easier but after

2 that there was only two more weeks that I was there and on
3 a Monday night I gave him \$10 and on the last Monday it
4 was five.

5 Q Do you remember when the last Monday was to the
6 best of your recollection?

7 A 27th or the 28th of February.

8 Q Mr. La Proscia, let me direct your attention
9 to January 20, 1975, at approximately 6 P.M.

10 MR. TURNER: Objection. All right, withdrawn.

11 Q Did you have a conversation at that time?

12 A Yes.

13 Q With whom?

14 A Michael Hardy.

15 Q How did you know Michael Hardy?

16 A He was an inmate with me in Danbury.

17 Q Did you know him from any place besides Danbury?

18 A No.

19 Q Was he still in Danbury at the time?

20 A No, I also knew him at the Halfway House too.
21 He came there when I was there.

22 Q And was this conversation in person or on the
23 telephone?

24 A Telephone.

25 MR. IASON: No further questions.

2 A Yes.

3 Q How long had you been in the institution prior
4 to this meeting with Mr. Douglass?

5 A A week, week and a half I think, about.
6 It was like from the 18th to right after the New Year's
7 holidays.

8 Q It was after the New Year's holidays?

9 A Right after the Christmas-New Year's holidays,
10 right, so I figure about two weeks, almost -- two weeks.

11 Q This meeting took place in January?

12 A Yes, around January 6th, 7th, somewhere around
13 there. I'm not sure.

14 Q Mr. La Proscia, what was the reason for being
15 brought to a Halfway House?

16 A I was having work done on my teeth.

17 Q And you had to have a special doctor do this work?

18 A Yes.

19 Q As a result were you given special hours?

20 A No.

21 Q When you went to the Woodward before the meeting
22 with Douglass, what hours were you given?

23 A Same as everybody else.

24 Q Everybody in that hotel had the same hours?

25 A Should have had, yes. As far as I know, you know.

2 Q What day of the week was it, if you recall?

3 A It was a Thursday.

4 Q Whom were you with at that time?

5 A I was with Detective Erwin, Sgt. Powers, Agents
6 Fleischer and Lazzara, and Officer Blanshaft.

7 Q And what did you do?

8 A I was wired for sound with a Kel and a Nagra
9 and I then went to the Woodward Hotel.

10 Q Did you give your permission to have your conver-
11 sations recorded?

12 A Yes, I did.

13 Q Were you given anything in connection with this
14 investigation by any of the law enforcement officers?

15 A Yes, I was given a specific amount of money.

16 Q Where did you go next?

17 A Well, from those offices we proceeded to the
18 Woodward Hotel.

19 Q And where in the Woodward Hotel, Mr. Hardy?

20 A Second floor to Mr. Douglass' office.

21 Q Who was in that office?

22 A Mr. Douglass.

23 Q Was anyone else present as you recall?

24 A To the best of my recollection, I don't think
25 there was anyone else present.

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mbh

Hardy-direct

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Q Did you have a conversation with Mr. Douglass at this time?

A Yes, I did.

Q To the best of your recollection, what did you say to Mr. Douglass and what did he say to you?

A He said "I think I am going to let you go on that weekend pass tonight, Hardy. You got a long way to travel, you got to go upstate, and you may as well get an early start." I says "Thank you very much, Mr. Douglass. I really appreciate that." And -- let's see-- I said "Thank you, Mr. Douglass, I really appreciate that."

I said, I says "Here's 25." I says "Take it." I says "I really appreciate the favor you are doing me."

And he says "You got to be back Sunday night." And I says "Okay, I will." He says -- I think he says "Don't get in any trouble or anything like that" and I know, you know, I then said "Here's 25, take it" and he says "Okay" and that was the whole conversation. It was a fairly short conversation.

Q What, if anything, happened during this conversation?

A I took \$25 out of my pocket and I put it in Mr. Douglass' hand, and he said "Okay" and put it in his pocket.

Q Mr. Hardy, please look at the tape recording that's been taken from the envelope marked Government Exhibit

1 full morning and I'd like to get the program I have outlined
2 done before lunch, so you can have an easy afternoon to
3 deal with the problem. All right, ladies and gentlemen,
4 good night.
5

6 (The jury left the courtroom.)

7 THE COURT: Just a few observations about the
8 charge.

9 What called this to my mind is this case that
10 Mr. Iason called to my attention.

11 MR. IASON: Harary, your Honor?

12 THE COURT: Yes. That dealt with a bribe given,
13 and that made it quite clear that under the bribe-giving
14 statute, the bribe has to be in expectation of future action.
15 As I read the bribe-taking statute, that is not so; and
16 as I read the bribe-taking, it can either be accepted--
17 because it is the defendant's frame of mind that is important,
18 not the giver -- and the defendant either accepts it
19 as inducement to future action or as reward for past action,
20 assuming the action to have been in the improper
21 influence of his discretion. I just want to make that clear
22 both so you can sum up knowing what I am going to say
23 and also if you think I am wrong I would like to hear
24 about it now, not later.

25 If anybody has any different views on reading

1 the statute--

2 MR. IASON: It seems that it is clearly what
3 the statute --

4 THE COURT: That is what it seems to me but I
5 just want to make sure that in the first place the defendant
6 knows what I am going to say, and in the second place if
7 you have any reason why I should say something different,
8 I would like to hear you.

9 MR. TURNER: I didn't anticipate that. I thought
10 when I read the statute I didn't get that impression but
11 I wasn't reading it with that in mind. I was going along
12 on the basis that that statute was talking about -- bribing
13 for future favors.

14 THE COURT: What the statute says is in return
15 for being influenced.

16 MR. TURNER: Right.

17 THE COURT: That looks to me as though it is either
18 way.

19 MR. TURNER: As I say --

20 THE COURT: It seems to me the purpose of the
21 statute is the same. When you are giving obviously you
22 are in a different situation. So if overnight you have
23 any different views, I will hear them; but let me know before
24 you sum up so you will know whether I agree with you or not.
25

1 MR. TURNER: State of mind of recipient
2
3 before a bribe is given cannot be -- the recipient cannot
4 have anything in mind about his behavior before he's
5 first confronted with a bribe.

6 THE COURT: When he takes the money, his state
7 of mind has got to be "I am accepting this"-- obviously
8 he doesn't spell it out -- "I am accepting this because
9 I know he wants me to act in the future, and I am going to
10 act in the future in this way" or "I am accepting this because
11 he knows I have acted in the past, and I am accepting
12 this as a reward for what I have done in the past." Either
13 one of those is adequate as I read the statute. The jury
14 has got to find a specific--

15 MR. TURNER: I thought the difference of those
16 two actions were a gratuity.

17 THE COURT: As I read the gratuity section it
18 doesn't have to be anything improper. If I take \$10 from
19 each of you just to try this case, I am not suggesting--
20 that doesn't mean that I am going to try it improperly but
21 I have violated the statute. So that doesn't -- a gratuity
22 there wouldn't have to be anything improper about accepting
23 the money.

24 MR. IASON: Money given to a public official.

25 THE COURT: If a guard accepts money from a

1 mbh
2 defendant just for being nice to him, being polite,
3 he is supposed to be polite, so he accepts -- that is
4 a gratuity. If I accept money from you two people, if you
5 people are sorry for me and don't think I get enough money
6 and you give me a hundred dollars each, that is not intended
7 to influence my judgment one way or the other but it is
8 a gratuity; and I would be violating the statute if I
9 take it from one of you even though I decide correctly,
10 if you just want me to be sure I am correct in your favor.

11 MR. TURNER: There is a very thin line in this
12 case because of the type of authority that we are talking
13 about. We are talking about a Correction officer who acts
14 as a case worker, who is given the title case worker,
15 to help those residents in that hotel acclimate themselves
16 back into society. As a result what may appear as looking
17 to be polite to a person or helping him along, looking after
18 his welfare may in one instance be entirely what you said
19 a gratuity.

20 THE COURT: I am going to say that if it is a
21 question of reward, that's especially because of the phrase-
22 ology of the indictment -- if the indictment was phrased
23 differently I think it might be entitled to give a more
24 favorable to it and less favorable to you charge -- in
25 this case I am going to say that he has to -- his frame of

mind -- does not make any difference whether he is right or wrong -- his frame of mind has to be that he is giving this -- taking this money in return for having done something to which the defendant -- to which the giver wasn't entitled as a matter of right or about to do something which the -- it doesn't have to mean that it is improper. It doesn't have to be unlawful. I can be completely in my discretion to grant you an adjournment or not grant you an adjournment but if I take \$10 to grant you an adjournment I am guilty of being bribed and you are guilty of bribing me. It doesn't make any difference whether it is proper or improper. Maybe anybody but a fool would have granted an adjournment under the same facts. But in this case I am going to say, because of the phraseology of the indictment, that it has to be something for which in his own mind he wasn't entitled because that is what the indictment says.

But if he takes the money in return for something, for having done something, exercised his discretion in a manner more favorable than he was entitled or about to exercise his discretion in a manner more favorable than he was entitled.

MR. TURNER: I understand what you are saying, your Honor. I would have an objection to that charge for the record.

1 mbh
2 THE COURT: I don't want it for the record. I
3 want to know why you think I am wrong.

4 MR. TURNER: My own interpretation of the statute
5 is that -- and with respect to the indictment and the facts
6 in this case -- is that the government would have to show
7 an influence on the defendant's behavior
8 after the giving of money.

9 THE COURT: What is your view on it?

10 MR. IASON: It is clearly not the law. As long
11 as the money was given, or accepted rather, with a -- for
12 a corrupt purpose, that is a violation of the bribery
13 statute, and whether the -- the fact in this case may be,
14 for instance, as to the payment on, I believe, February 6th
15 that that came immediately after the defendant according
16 to the evidence told Mr. Hardy that he'd given a weekend
17 pass, and it would be the government's position--

18 THE COURT: The one immediately before that is
19 susceptible of the inference that he was accepting it
20 as reward for past services. The one on the 6th it certainly
21 suggests that he was getting it for the weekend pass which
22 he was then -- I mean the last one certainly suggests
23 that he was getting it for the weekend pass that was about
24 to be issued.

25 MR. TURNER: The 27th you are talking about?

1 THE COURT: The last one.

2 MR. TURNER: The 27th of February?

3 THE COURT: Yes.

4 MR. TURNER: Your Honor, I don't want to sum
5 up to the Court but the tape that we listened to clearly
6 showed that a pass was given to the defendant prior
7 to any offer by the witness of money. He had already given
8 the pass.
9

10 MR. IASON: And it is clear that that is sufficient
11 under the law.

12 THE COURT: Maybe you are right about the sequence
13 but it is certainly the general tone was the pass and the
14 money seemed to be -- anyway that's --

15 MR. IASON: Your Honor, I think the point
16 is that if the money was accepted in exchange for the
17 services, the weekend pass or the nights out, if that is
18 what the money was accepted in exchange for, it doesn't
19 matter which came first. That is the only point.

20 THE COURT: That is what I feel and when the bribe
21 being offered, the offeree -- the offeror, according to
22 the case you showed me, Harary, indicates that it has to be
23 for future services when the bribe is being offered
24 but the statute is different.

25 MR. TURNER: Your Honor, to be specific, on the

27th -- sorry, I was looking down at the last count.

Actually it is the fourth count of the indictment. The 27th is the last day that we are talking about. It is the defense contention that whatever action was taken by Mr. Douglass had already been consummated, that a pass had already been issued and there was no talk about any money, and that after that pass -- after Mr. Douglass had told Hardy that he could have this pass, everything was -- that conversation had been finished. Then Mr. Hardy offered \$25 to Mr. Douglass. At that point it could not be a bribe since he had already received a pass but it could be, if the jury wanted to find such, an unlawful gratuity.

THE COURT: You want me to charge unlawful gratuity?

MR. TURNER: I thought the government had asked to have it charged.

THE COURT: I said wouldn't do it. You objected and I said I wouldn't do it. If you want me to charge unlawful gratuity, I will; but if I do that you haven't got a Chinaman's chance of acquittal. I don't know if you have one now or not but if you do that now they will certainly get a gratuity conviction.

MR. TURNER: I had misunderstood the Court. I thought the Court had denied my application and was going

2 to charge that.

3 THE COURT: No, no, I said unless you sum up
4 in such a way as to invite such a charge, I am not going
5 to give it. If you do sum up in such a way so as to invite
6 the charge I will give it.

7 MR. TURNER: I won't say what I just said to you
8 to the jury, that's for sure. I was just trying to use
9 that analogy to explain why I think that the statute
10 clearly talks about future action, not past action; because
11 then you would have two statutes which are almost saying
12 the same thing or at least apply to the same action.

13 THE COURT: No, they don't exactly. As I say, a
14 gratuity doesn't involve any impropriety in the action.
15 The bribe does involve impropriety.

16 MR. TURNER: But in this case, both statutes
17 are applicable here, not necessarily as a lesser included
18 but they are almost identical.

19 THE COURT: No, you have to have -- to go back
20 to the judicial function, a gratuity would be you ask
21 for an adjournment and I give you an adjournment which is
22 perfectly proper, and you say "Gee thanks a lot" and you
23 give me ten bucks. Well, you gave me a gratuity. If I
24 do something wrong or --

25 MR. IASON: Your Honor, I think that would be

2 a bribe

3 THE COURT: Not after it was over.

4 MR. IASON: I think it would be.

5 THE COURT: No, he asks for an adjournment and
6 I gave him an adjournment. Nothing is said about money
7 at that point and then he gives me ten bucks.

8 MR. IASON: Your Honor, one thing most
9 respectfully I think that that analogy in this case
10 would be misleading to the jury first of all.

11 THE COURT: I am not going to give it to them.

12 MR. IASON: All right, because you have a
13 continuing course of conduct.

14 THE COURT: I am not going to suggest to the
15 jury that I have been bribed.

16 MR. IASON: No, but you have a continuing course
17 of conduct and I think it makes a world of difference.
18 I don't think we have this question. I think, your Honor,
19 the facts of this case where the only evidence is a series
20 of bribes there is no --

21 THE COURT: But each case is an individual crime
22 by itself.

23 MR. IASON: Of course. Each count must be
24 considered separately, your Honor, but they must be
25 considered in a context of all the evidence and the evidence

is not that there was one payment was for an incident that was either about to happen or had happened, but that there was a continuing course of conduct.

THE COURT: Right but the --

MR. IASON: The testimony of both.

THE COURT: Unless my construction of this statute is correct according to his version -- according to what he tells me the tape says and I guess he is probably right about that -- there was no future action after that last payment.

MR. IASON: Because Mr. Douglass was arrested and that is the evidence. But as far as his intent was concerned which is the only thing in issue, nobody can know what his intent was as examined by a future action because he was arrested then.

THE COURT: I see your point.

MR. TURNER: The analogy you just gave is exactly on all fours with what had occurred on the 27th. Mr. Douglass had given a pass, within his authority to do such. If you gave an adjournment it would be within your authority. If after you gave an adjournment I gave you \$10, it is the same situation as Hardy giving Douglass \$10 after he gave him a pass.

THE COURT: But the point is, Mr. Iason is

1 saying you have been exceedingly lucky in getting adjourn-
2 ments over a period of time because after each one you
3 gave me \$10, and you gave me this \$10 adjournment and then
4 I was immediately arrested, the jury could well infer that
5 this was my -- I was accepting it with the understanding
6 that next time you asked for an adjournment you would
7 get it so that would be a future action.
8

9 MR. IASON: Excuse me, your Honor, the evidence
10 in this case is frankly a lot more compelling than that
11 because the testimony of Mr. La Proscia was that he first
12 gave the \$50 to Mr. Douglass and had to stay in a Halfway
13 House that night and it was the next night then that
14 they paid him by the week and that that was the understanding,
15 and you had Mr. Hardy testify and it was on a tape that Mr.
16 Hardy said I will give you \$50 to start and \$30 a week,
17 and the testimony was that it was after he told Mr. Douglass
18 this that Mr. Douglass first acted. I think it is just
19 clear that you have got this continuing course of conduct.
20

21 THE COURT: Then maybe if that's your view of the
22 evidence, maybe you better not raise the question that
23 Mr. --

24 MR. IASON: I think it was the question that your
25 Honor raised as to whether it had to be for future or
past.

1 mbh
2 THE COURT: Yes.

3 MR. IASON: And what I am suggesting to the Court--

4 THE COURT: Well, then --

5 MR. IASON: -- is that it is just not an issue
6 under the evidence in this case.

7 THE COURT: Then I will charge them it has to be
8 with intent for future action and --

9 MR. IASON: Well, no --

10 THE COURT: Excuse me.

11 We have to make up our mind how we are going
12 to charge the jury. The arguments you are making are
13 very good arguments for facts but if I charge that way,
14 if I charge the way I was going to charge they would be
15 wholly useless in trying to sustain the verdict.
16 It wouldn't make any difference if the jury was entitled
17 to believe a future action. If I charge them that it
18 didn't make any difference one way or another, and he was
19 right, he'd be entitled to a reversal.

20 MR. IASON: And your Honor, the government is
21 sufficiently confident of the law in this that we are
22 willing to take that chance.

23 THE COURT: You are not so confident of the
24 fact so why --

25 MR. IASON: Because very simply, your Honor, I think

1 that telling this jury under the evidence and the way
2 I have to anticipate one aspect of Mr. Turner's summation,
3 telling this jury under those circumstances that the
4 money must be for future action is going to just confuse
5 them unnecessarily and that is why I think that it is just--
6 the way this statute is drafted, and frankly the way
7 the ordinary bribe instructions under this Section C,
8 Subsection C are drafted, it is not necessary to comment
9 on any temporal aspect and I think that it can just be
10 omitted from the charge.
11

12 THE COURT: You have got to tell them what the
13 intention is.

14 MR. IASON: The intention was to take the money
15 in return for letting him stay out at night or for letting
16 him have weekend passes and it didn't matter whether
17 the pass came first or the money came first.

18 THE COURT: Then they've got to be told that.

19 MR. IASON: I think they can be told it does
20 not matter which came first.

21 THE COURT: Then -- then -- if you are wrong
22 on that.

23 MR. IASON: I understand.

24 THE COURT: All the powerful evidence showing
25 that they could conclude that it was partly in expectation

1
2 it was going to continue if he hadn't been arrested is
3 wholly -- is not available to you.

4 MR. IASON: On appeal.

5 THE COURT: On appeal.

6 MR. IASON: Yes, your Honor, I understand that.

7 THE COURT: All right. I think you are right
8 but you are raising the question.

9 MR. IASON: Yes, your Honor.

10 THE COURT: I happen to agree with you but it
11 won't be the first time I have been wrong.

12 MR. TURNER: Your Honor, the money in the past
13 that Mr. Hardy gave to Douglass on the last day, on the
14 27th, if you charged it the way I am asking to have it
15 charged, could still be considered to have been given
16 because of a bribe but it would be a bribe that took place
17 the day before.

18 THE COURT: Yes, but I don't care why
19 that money was given. It is the acceptance of the money
20 that counts. It is what was in his mind when he took the
21 money and I am going to charge which I think is correct
22 but as I have said it won't be the first time I haven't
23 been correct. I am going to charge according to what the
24 government -- the position the government has just taken
25 that in taking that money, it is immaterial whether he was

2 doing it -- what he thought, was he accepting it
3 in gratitude for past actions or assurance that he would
4 act the same way in the future so long as it is related
5 in his mind to improper conduct for the benefit of Hardy.
6 That's all that has to be considered.

7 MR. TURNER: So the government would have to
8 prove that when he accepted money on the last day that
9 Mr. Douglass took that money with the intent.

10 THE COURT: Not necessarily. Either the intent
11 to do something for Mr. Hardy in the future or he took
12 it as reward for having done something for Mr. Hardy in
13 the past.

14 MR. TURNER: I should say he gave him the
15 pass with the anticipation that he would pay him for it.

16 MR. IASON: Because he received more before
17 that.

18 THE COURT: That has nothing to do with it.

19 MR. TURNER: I could see that logic of doing
20 something if he was paid earlier but you are also talking
21 about the 27th, no action took place after the money
22 was given on the 27th so you have to go -- we have to go
23 back with respect to that money.

24 THE COURT: No, you don't have to go either way.
25 The jury could rationally infer that Mr. Douglass has had
in mind -- did not have in mind getting arrested

number 1, and did have in mind doing future favors to Mr. Hardy, and I was prepared to tell them it had to be. The government does not want me to and I think the government is right and it is not my function to protect their record if I think they are right so I am going to charge when he took that money his intent had to be -- his intent had to be -- his frame of mind had to be either that he was accepting a reward for past services done, improperly done for Mr. Hardy, or in realization that he was going to do improper favors for him in the future. As I say, I don't think the favors have to be improper but you are entitled to have it so charged and that is what I am going to charge. In other words, the Madden case established that it is no defense to take a bribe just because what you do is right. That was the issue that was litigated in that case; but this indictment says it was improper so I think you are entitled to rely on it.

Also I am going to charge unless the government has some reason not to, I am going to charge that La Froscia is an accomplice. That's my recollection of bribe giving and bribe taking although they are technically different. He is technically guilty of a violation of a different subsection; when they are treated for witness purposes as accomplices. That's my recollection of the

1 law. I haven't looked it up this way and I don't see
2 how else you can explain the thing to the jury because
3 all logic is the same. The same act makes it criminal
4 and all the motives and everything else that goes with
5 accomplice applied to the fact that is a different sub-
6 section of the statute doesn't seem to me very relevant
7 and I think the cases so hold.

8
9 MR. IASON: I am not familiar with the law
10 on that, your Honor.

11 THE COURT: That is what I am going to do.

12 MR. IASON: Yes, your Honor. The only other
13 matter the government would raise at this time is that
14 the Court consider that after summations we entertain
15 possibly brief argument whether the gratuity charge should
16 be included because --

17 THE COURT: After summation I will see whether
18 we need an argument or whether it is obvious.

19 MR. IASON: Very well, your Honor.

20 THE COURT: We will have a recess after
21 summation.

22 MR. TURNER: Accomplice charge would be a nice
23 charge if this were a state court.

24 THE COURT: What?

25 MR. TURNER: It would be a nice charge if this

1
2 were a state court.

3 THE COURT: I don't give the accomplice charge
4 in state terms but I give the federal accomplice charge
5 which is that they must weigh it and the reasons but having
6 weighed it they can act on it just like any other evidence.

7 MR. TURNER: In the state case if it were
8 an accomplice you'd have to have corroboration.

9 THE COURT: The tape would be plenty of cor-
10 roborations.

11 MR. TURNER: Your Honor, you just instructed
12 the jury concerning the defendant's failure to take the
13 stand. Are you going to include that in your charge also?

14 THE COURT: I will refer to it.

15 MR. TURNER: I would ask that the Court do
16 that.

17 THE COURT: I will refer to it. I won't go into it
18 at any great length. I will just remind them of what I said.

19 MR. IASON: Your Honor, one last thing: With
20 the Court's permission I would like an opportunity to
21 keep with me this evening the log that was put into evidence
22 this evening. Exhibit 16.

23 THE COURT: Off the record.

24 (Discussion off the record.)
25

(Adjourned to Friday, December 5, 1975, at
9:30 A.M.)

While Mr. Turner is telling you about Mr. Hardy and Mr. La Froscia not being worthy of belief and all about reasonable doubt, how can he explain all this evidence? How can he suggest any reason for you to have a reasonable doubt? As Mr. Turner has made you aware a couple of times in the last few minutes, I will have another opportunity to speak with you briefly after he makes his summation. That is because the government has the burden of proof.

MR. TURNER: Objection as to what the reason is.

THE COURT: All right.

MR. IASON: And it is a burden that the government willingly accepts. When I come back, I will make a few remarks about Mr. Turner's comments to you; and then ask you simply to decide the case as you swore you would, on the evidence alone without any basis of fear, prejudice or sympathy. Thank you for being so attentive.

MR. TURNER: Your Honor, Mr. Iason, madam forelady, ladies and gentlemen of the jury: What I say to you now, as what Mr. Iason said to you, is not evidence. It is merely my opinion or what inferences I draw from the testimony or evidence in this case and I am asking you to accept my inferences, I am asking you to accept the logic as I see this case.

You will notice that this courtroom, as in all

1 courtrooms, is set up such that the Judge sits at the
2 highest level, because he is the law, he gives you the law,
3 and you must accept the law as he gives it to you. The
4 second highest position in the courtroom is the witness box.
5 The witness stand is high so that everyone in this courtroom
6 can observe that witness. You are to observe that witness,
7 look at his demeanor, say to yourself, "Is this man a
8 man that I can believe?" Listen to what he says; is it
9 credible? Is it something you can believe? What kind of
10 man is it? What is his background? A man who has been
11 convicted of a crime can be said to be not credible. You
12 can disbelieve all of his testimony just because he's been
13 convicted of a felony. A convicted felon may not be
14 worthy of belief. What kind of motivation does the witness
15 have? Why did he testify the way he testified? Is he
16 testifying for self-preservation? And is that motivation
17 strong enough to make that person lie? And if so, should
18 I believe him or is his motivation too strong to be
19 credible? A combination of all these tests can destroy
20 a witness. You can say "I don't believe this man. This
21 man is incredible. He is a felon. He's got motivation.
22 What he says is incredible. Inconsistencies in his
23 testimony are prevalent; and therefore I don't believe him."
24 And I will go over each of these points with respect to
25

1 each witness that took the stand but first I would like
2 to go over the first witness' testimony, Mr. Walsh. Mr.
3 Walsh is an important witness because he gives us background
4 on what a Halfway House is. First of all, Mr. Walsh is
5 a director of the Halfway Houses here in the city. He
6 is in the administrative office. He does not function as
7 a staff member per se. What he does is he runs and co-
8 ordinates the several different buildings that combine
9 to make up the Community Treatment Centers.
10

11 He tells you that the purpose of a Halfway House
12 is not to rehabilitate but to reinstate those persons who
13 have been incarcerated in penal institutions back into
14 society. It is a very liberal setup. They have a minimal
15 amount of time they have to spend in this residence. Really,
16 they are working, living with family in many instances,
17 just spending a small amount of time, a small amount of
18 supervision in a Halfway House, and there are staff members
19 who staff the Halfway House.

20 Mr. Douglass is a case worker. He is not a
21 correction guard any more, as he has been for 15 years.
22 He is a case worker. That is, he helps the residents
23 of this institution to get back into society. The Assistant
24 United States Attorney indicates to you he is trying to
25 help them for whatever reason, he is trying to help them

because he is being paid money. Obviously that is his job, that is what he is there for. He is there to help these residents.

What kind of residents are these? These are convicts. Mr. Hardy is a convicted murderer. You are not tough with these guys. It is not a security prison. You don't have guns, you don't have clubs.

MR. IASON: Objection, your Honor, there is no evidence as to whether Mr. Douglass had a gun. He may well have had one.

THE COURT: No prison guards have guns in any prison.

MR. TURNER: There are no bars in this place. These are rooms. They each have their own room. They come and go as they please. They have restriction for sign-in-sign-out is the only restriction they have and a minimal amount of time to be spent there. The regulations are rather broad.

Mr. Douglass has to assist these people. He doesn't order them around. These transcripts tell the kind of person Mr. Douglass is, the way he helps people. "I am trying to help you, Mr. Hardy, I am trying to do something for you, Mr. Hardy. I will give you a pass." Gives him a pass because he lives in Spring Valley. Mr.

Walsh told us that one of the considerations for giving a pass out is the distance from the community center. Mr. Hardy happens to live in Spring Valley, a distance which Mr. Walsh tells us gives him extra consideration because of distance he travels, and for that reason passes can be given, and by the way, passes can be given six weeks we are talking about here, six weeks, how many passes are we talking about? Two. And on one occasion restrictions.

Mr. Walsh tells us that Twomey, the other staff member that works from 12 to 8, and that from 8 o'clock in the morning until 4 in the afternoon there is no staff member in that hotel; no one to prevent people from coming and leaving. That is a pretty lenient setup. The only way Douglass can know what happened from the 12 to 8 shift, that is the 12 midnight to 8 shift is by looking in this book, a logbook. If somebody is missing from the 12 to 8 shift, it's got to be told to Mr. Douglass through this book; because Douglass doesn't come in until 4 in the afternoon. Twomey leaves at 8 in the morning. They don't see each other.

So Twomey is supposed to write down in this book who is missing, and then Douglass takes appropriate action which he showed he did on the one occasion when Twomey who was obviously corrupt was not there, and an honest

2 person came in and found six prisoners or residents, I
3 should say, missing. The only one in a position it
4 seems in this residence to really give away overnight
5 passes is Twomey because Douglass leaves at 12 o'clock.
6 Twomey is the only one who can let people out of that
7 institution during the evening.

8 Mr. Walsh gives us more information. Mr. Walsh
9 tells us that Mr. Douglass is a good worker, a responsible
10 worker, he's always done his work properly, he comes in
11 early on occasion, never late, never absent, glowing
12 praises. I ask you to consider that in weighing the
13 evidence in this case, in considering the inferences that
14 the United States Attorney would like you to believe,
15 and the inferences you should believe in this case. In
16 fact Twomey, who is supposed to be there and checking and
17 taking count, never takes any count, is supposed to sign
18 the sheet, he doesn't even sign the sheets when he is
19 supposed to, the sign-in sheets.

20 Let me go on to Mr. La Froschia. Mr. La Froschia
21 is a convicted felon. The United States Attorney indicates
22 to you who else is there that we could use except for
23 these bad guys? He says it is outrageous that you -- that
24 the people with these records should be permitted to
25 go and come and do things which he alleges, it is outrageous

1 that these people are the kind of people that they should
2 present to you and ask you to come back with a verdict.
3 That is outrageous. They have undercover agents, they
4 have police officers, they have FBI agents that can go
5 and infiltrate into any community center. He says how
6 can they do it? He knows how they can do it. They don't
7 need convicted felons to do these things. Mr. La Froscia,
8 a convicted felon, admitted that he had been in violation
9 of the Penal Law of the State of New York, a felony, carried
10 a deadly concealed weapon, admitted that he was convicted,
11 and by the way, when I say he admitted, he had no choice.
12 Obviously it is on the record. He is not going to come
13 in here and say, "I wasn't convicted" and then have me cross-
14 examine him with the record to show that he was convicted
15 without telling you things out of the goodness of his heart.
16 Convicted of smugglish hashish. All right, hashish is
17 a resin of the marijuana plant, a very strong form of
18 marijuana. Fine, but what does he tell you? 250 pounds
19 he smuggled into this country. He tells you that during
20 the trial he got on the stand and testified and he lied.
21 He lied. Why did he lie at his trial? Obviously he lied
22 to save himself. He lied because of self-preservation.
23 Now he is testifying here. Why is he lying here? For
24 the same reason obviously. He is lying because he is
25

1 being given a deal, he's been charged with a felony,
2 he is getting consideration, he is being given a misdemeanor
3 plea. He tells you he hopes he is not even going to jail
4 on the thing. He hopes to walk out of here scot-free, so he
5 is coming here to testify but the motivation is the same
6 motivation which has admittedly caused him to lie in the
7 past under oath. I ask this jury, I submit to this jury
8 that the testimony he gives here is no more credible than
9 he gave at his own trial because he has the same motivation,
10 self-preservation. The man is a convicted felon and he
11 has motivation making him an incredible witness, a witness
12 whose credibility cannot substantiate proof beyond a
13 reasonable doubt. I ask you just based on his convictions
14 and based on his motivation that you reject his testimony.

15 But there is more. He says his friend calls him.
16 We know there was a conversation. We have a transcript
17 of that conversation; and I am going to show you in that
18 transcript why and how we know he is lying here in this
19 court. He tells you in this court that he handed-- excuse
20 me -- very important, he tells you that he placed an envelope
21 which contained \$50 on the desk of Mr. Douglass. He says
22 at first "I think he picked it up." Then when pressed he
23 says he did pick it up. Now all of a sudden he's seen him
24 pick it up. At first he wasn't sure whether he picked it up.
25

1 Under any situation, he did not ever see Mr. Douglass
2 look in it. There was no way he can tell you that Mr.
3 Douglass saw money, because he tells you he didn't. This,
4 he says, is the first time he has bribed a public official
5 in this institution. This is the first time he went to
6 Mr. Douglass. You would think he would remember that. You
7 would think he'd remember that in detail. He goes to
8 Mr. Douglass and says he gives him an envelope. It is vivid
9 in his mind. I asked him, are you sure? He says it
10 is an envelope. Even when confronted with the inconsistency
11 he says it was an envelope.
12

13 I submit to this jury that if a man does something
14 as he said he did, he would know whether he placed it in
15 his hand and would know where you could see it was money
16 and he shook hands with him and the money was there and
17 said "There, I want to get out" or whether he did it the
18 way he said he did it on the phone -- excuse me, the way
19 he said he did it here in court.

20 What does he say with respect to -- that conver-
21 sation the phone? First he says -- he is talking to
22 a trusted friend, he is talking to an ex-con, they have
23 been through it together, there is no reason that he should
24 distrust his friend, They are talking, "Hey, how are you?
25 How is it going?" "Fine. Where you been? "I went out.

1 mbh
2 "Make any money here?" "Yes." "Fine." They are just
3 throwing the bull and they are having a good time talking,
4 and then all of a sudden Hardy gets right to the point, after
5 warming up and says, "I want to reach Douglass," and La
6 Froscia says, And La Froscia says, which is the proper
7 reaction and I submit to this jury that it is the only
8 truthful thing you can believe because he's hit with it
9 right away he says "I don't think you can reach Douglass."
10 He didn't say "Oh, that's nice"; if he had reached Douglass
11 as he says he did, and he doesn't want to mention it to
12 Hardy, wouldn't he just say "Do what you want," or "That's
13 nice," or whatever and go on? No, he actually gives his
14 opinion. He gives his opinion because it is the truth.
15 The guy is rapping to him about trying to reach somebody
16 and he is telling him, he is telling the truth. He says
17 "I don't think he can be reached. I don't think he will
18 go for that." Now Hardy starts pressing and pressing.
19 He is practically calling Mr. La Froscia stupid. "Hey,
20 man, I hear a lot of the guys are doing it. Hey, the whole
21 joints out. What are you stupid? Don't you see this?"
22 And La Froscia, the punk who is rapping with a friend,
23 says "Oh, yeah, yeah, I hear, sure, sure, I gave \$50, yeah,
24 I gave \$50. I give money all the time; sure."
25 Hardy goes on and says, "Maybe you will rap with him?"

1 "On, yes, sure." Now he is a bigshot. He is a bigshot
2 rapping with another ex-con when all of a sudden Hardy
3 is terminating the conversation, it is the end of the
4 conversation, and he says to him, "Now, you will rap with
5 him, won't you?" That is, Hardy says to La Froschia,
6 "You will rap with him, won't you?" And La Froschia all of
7 a sudden sees the reality of the situation, that he wants
8 him to go speak to Douglass; and what does he say at the
9 end of the conversation on page 10? He says, "I don't think
10 he will go for that." This is the guy who has just told
11 him that he gave him money, he is rapping and everything
12 else but now he is confronted with actually speaking to
13 him and he again reiterates the truth, again says "I don't
14 think Douglass will go for it."

15
16 Mr. Iason indicated to you that he says both ways,
17 he gave it to him in his hand and he gave it to him in
18 an envelope. Specifically, in the transcript on the
19 telephone, specifically he was asked, and I am only reading
20 this. I don't like to use language before a jury like
21 this but it is the language in the transcript and I am going
22 to read it exactly as it is. He says "Ha ha well how the
23 fuck did you do it? I don't understand" and La Froschia
24 answers "Just like that, man, I put -- I put \$50 in my hand,
25 shook hands with him, went into my hand, he looked at me

and I said "Yeah, I just want to sign in."

Now he tells him that he put it in his hand. That is two weeks after it allegedly happened. And yet on the stand he swears to you when pressed on it, he swears to you it was in an envelope and it didn't go in his hand, it went on the desk and that Douglass never saw what was in it, at least in front of him.

The envelope bit is something which he talks to Hardy when Hardy says, "How do I do it?" And he says, "You just give him an envelope." He didn't say he gave him an envelope. He says, "You just give him an envelope." And then he says "Well, how did you do it?" And he says he did it with a hand shake. You can review that. You don't have to accept my word for it but look at it and you will see that he says he did it with a hand shake and in court he says he did it with an envelope. I submit he can't be mistaken about that because that is something he would have remembered unless it's a fabrication. Then it can be confusing. Then he doesn't know which story he tells, which one he should stick with. I submit that's a lie and an inconsistency and another reason why you should discount his testimony and I ask you, when you are reviewing all this to keep thinking about who is saying it, what kind of person it is and I submit that this person's

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testimony is so incredible because of his background, because of everything else, that you cannot take his testimony as credible, as proof beyond a reasonable doubt. The reason for the doubt? Inconsistent statement. Reason for doubt: prior criminal record. Reason for doubt: motivation.

And now, something else, something which may not even occur to you. A logbook that makes him a liar. A logbook. Mr. Iason says "I don't know how" -- when he reads the transcript says, "I don't know who it is in there. It is cold? I don't know. I am never there." Do you believe that he's never there? A logbook. We have proof. Mr. Kaufman who is an honest correction officer, excuse me, a resident, staff resident there, who took Twomey's place, who discovers Twomey's corruption, writes down in this book on the 13th of February, six inmates out of the entire institution. By the way six inmates, six inmates who are missing, six inmates. If La Froschia was not there, why isn't he in this book? You can only conclude that La Froschia is not one of the persons missing. La Froschia was there. He was sleeping in that institution. Indication that Mr. La Froschia is a liar, absolute proof that he is a liar. If you disbelieve part of his testimony, you can disbelieve all of his testimony; and I submit to you look at this logbook, look at it. It's not La Froschia

1 missing. Six inmates Hardy among them but not La Froscia.
2 He was there. If he is paying somebody off he is not doing
3 a good job because he was in that institution. La Froscia's
4 sign-in sheets. Look. It is Douglass' initials, the
5 Assistant tells you. He comes in -- he goes out at 8:30 in
6 the morning, there is nobody there to initial him at 8:30
7 in the morning. There is no staff member. He comes back
8 on Douglass' shift. Only thing Douglass can do, is say
9 to him, and Douglass does his job, he says to him "What
10 time did you leave this morning?" "8:30." "All right,
11 put down 8:30, sign. You come back at 11 o'clock" and
12 he signs it. That is the only reason Douglass' name
13 appears there on the sign-in sheets because there is
14 nobody there during the day to do that initial and Twomey
15 doesn't do his initialing anyway most of the time.
16

17 La Froscia "As far as that goes, I don't think
18 he is going to go for that"; doesn't think he will go
19 for that. And the end of the conversation "I don't know
20 how far you will get with that." Same thing, all over again
21 he says "I don't think you will get anywhere with that
22 Douglass." "I ask you to review it, and I think you will
23 find that his testimony is incredible; especially December,
24 this December testimony. I mean he tells you that it
25 happened in December. Then on cross-examination he says

1 it happened in January. On cross-examination he said that
2 it was after New Year's; it was January that he gave
3 him the \$50. He told everybody else, it is in the in-
4 dictment and the indictment only reflects what La Froscia
5 says, in or around December, April, he says definitely
6 after New Year's. He doesn't even remember when it
7 happened. He keeps inconsistencies changing his story
8 and I submit to you that these inconsistencies can only
9 prove to you that it is a lie.
10

11 I ask you, you must, you must reject his testimony,
12 you must say to yourselves that "I cannot accept this
13 testimony as proof beyond a reasonable doubt" and that this
14 transcript does not substantiate, does not corroborate,
15 in any way his testimony but indicates to you, and is proof
16 to you that it is false, this logbook is the -- is the
17 culmination. This just destroys his testimony; because
18 if you look at it you will see that he is just a liar, and
19 I ask you on the basis of that that you just have to find
20 my client not guilty with respect to all those counts
21 where La Froscia says he gave the money. It is just not
22 credible and it's just not evidence beyond a reasonable
23 doubt. I have given you doubt, reason that you could attach
24 to it.

25 Now we get to Mr. Hardy, paid informant, \$155 a

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week. The man is living in a hotel at a rent of \$550 a month. That's a great way to live, especially a man of his background. a man who should be serving life in jail who is walking around because of his career that he found as a paid informant; and a paid informant, I must ask you to keep in mind, must produce. He must come up with things which he thinks will interest people, a motivation to fabricate things. This man is a convicted felon. He is not just a convicted felon, this man is a reenactment of the Penal Law, May 20, 1964, armed robbery; February 15, '65, New Jersey; armed robbery, '68; counterfeiting, '68, murder; '73, armed robbery; '74 armed robbery, '74 kidnapping. These armed robberies, conditional discharge, condition discharge. The man is being given the world, a convicted murderer is being given the world. What's the motivation for coming in here and why is he being given the world? Because this man has tried to get out of everything he's ever -- every time he's been restricted in any way including the Army he's tried to get out of it. He says that in this case, he was trying to get his sentence cut down. In two prior cases --

MR. IASON: Objection, your Honor.

THE COURT: His parole.

MR. TURNER: Well, I am assuming that is part of

his sentence, your Honor.

THE COURT: Yes.

MR. IASON: In which case? Not in this case, your Honor. He was not in this case.

MR. TURNER: I didn't mean that in this. I meant the reason he is motivated to testify in this case is to cut down his parole time that he was doing.

MR. IASON: Objection, your Honor, he said that had nothing to do with him, had to do with his earlier --

THE COURT: Yes, but that is for the jury to determine.

MR. IASON: But he is misstating the record.

THE COURT: He is trying to cut down his parole.

MR. TURNER: Two prior times he cooperated with the government to reduce his sentence, get out of jail. In the Army, took an overdose to feign insanity to get discharged. In the prosecutor's office, he goes in the prosecutor's office to give some more, he says the prosecutor left one door, he left the window. Mental institution he gets out of jail, he is in jail, he gets-- he feigns insar. y, gets into a mental institution for a checkup, for an examination, psychiatric examination and then makes a key, then escapes from that institution.

2 Finagling, always trying to get out. Now he's got
3 a new job, finds the cooperation, he finds that if he
4 can find things out or fabricate things which the government
5 might be interested in, then he can get the world. Obviously
6 this man cannot be believed, because he will do anything,
7 he will do anything to get results. This man finagled,
8 you listen to the tapes and you see how he is finagling,
9 the man makes up stories, he fabricates things, he is an
10 inveterate liar. We don't know what happened listening
11 to those tapes and I am going to show you throughout
12 going through these tapes, we don't know what happened
13 to that money and I submit to this jury that that money
14 was stolen, that every time there was a pause in that tape
15 he is walking in his room dropping the money and then he
16 drops a sound, he says here is 25 for you, here is 50 for
17 you or whatever, he says it in such a way that I don't
18 even think Douglass heard him because you can even hear
19 Douglass' responses so far away from him. And not one
20 of these tapes is there a response; except for the last
21 one, the 27th, which I will get to. Not a response.
22 The United States Attorney says he didn't reject it.
23 He didn't reject it. The fact that there is no response
24 doesn't mean that he accepted it. We don't know if he even
25 saw it, heard it or anything. There is no Proof. They

1 don't find any money on Mr. Douglass that is given to him.
2 All we have to go by is Hardy, his word. As a matter of
3 fact, if you listen to Hardy's testimony, he keeps saying
4 "And I offered him money and I offered him money" and then
5 the United States Attorney would say to him what happened
6 and in many instances he would forget and say, oh, yes,
7 he took the money and he put it in his pocket. Sure he
8 mentions money but there is no way for us to know whether
9 Mr. Douglass even saw or knew about that money. And I
10 submit to you that he didn't. And I ask you to go over
11 each of these. Isn't it incredible all these tapes and
12 you don't have one answer? Only denials, only denials.
13 On one tape he says he accepted the money and all you hear
14 is denials which we will get to in a minute.

16 The first time he goes to Douglass he says "I
17 had \$50 in my hand." Now, I don't think -- I submit to this
18 jury that you can't believe Hardy. It is just this man is
19 the most incredible witness, with everything in his background
20 you just can't believe him, so he says "I had \$50 in my
21 hand," that's just there is no corroboration of that
22 whatsoever, tapes or otherwise. He never mentions money
23 in the whole tape but yet he tells you "I got \$50 \$50 in
24 my hand," the whole time talking to Douglass. Did you
25 hear Douglass say "What's that \$50 or why are you sitting

1 there with \$50?" Nothing, there is no mention. He says,
2 "I had \$5 in my hand." That is only because he is gilding
3 the lily, he is framing a man, he is building a case against
4 him. Why is he building this case against him? Because
5 he knows that if he can get results, if he can get results,
6 he can frame a guy, then he gets rewarded. S he tells
7 you he had \$50 in his hand. Ridiculous, not one mention,
8 nothing in here of money. By the way, the word "program"
9 which is brought up on the tape, whose word is "program"?
10 It is Hardy's word. Hardy makes up a word. All of a sudden
11 we have a word in this trial, program, the program, the
12 program. It is Hardy's word. It's his fabrication. On the
13 21st Douglass says, "I know why you are here." He knows
14 why he is there. If he knows he is a paid informant,
15 if he knows he is there to testify in a homicide case in
16 Brooklyn, would Mr. Douglass ever take money from him?
17 That is incredible. Now Mr. Iason argues either way. One
18 time he says he didn't know about it. He read a statement.
19 "Bouley didn't tell me about you" and the other time he
20 says he did know about it. Either way if he did know about
21 him he refused it anyway, he refused it. And if he didn't
22 know about him it obviously he refused it. This first
23 tape is fraught with rejections, rejections. The first time
24 the man is talking to him in detail and he says no. Now
25

1 you don't talk to a resident, a man with his record by
2 saying "What the hell you doing? What is this?" You talk
3 to him like a case worker would talk to any resident in
4 a hotel, and I try to help the man, and that is what he
5 continually tries to do throughout. Before money is taken,
6 before anything he keeps saying, "I will help you do this,
7 I will give you a pass." Twice he gave him a pass in
8 six weeks because of his distance. Mr. Iason says wouldn't
9 it be nice if we all could leave on Thursday? He had be
10 back on Sunday. The last day, the very last day, the 27th
11 which we will get back to, he gives you the Friday off
12 instead of the Monday past which he had given him before
13 but tells him he must be back on Sunday. Nothing wrong
14 with that. Walsh told us there is nothing wrong with
15 giving a pass to a man who is a great distance away. And
16 he only does it twice.

17 Douglass tells Hardy when he mentions the word
18 program, he says, "There is no such program. Can you
19 understand me? There is no such thing."

20 I mean this is the first confrontation with
21 Hardy. He is setting Hardy straight on what the situation
22 is here. Mr. Iason talks about how he doesn't reject
23 it so much in the future and then says, well, that is
24 acceptance. Ridiculous, he set him straight in the
25

beginning, there is no program, there is no program." You have to do that, there's reasons for that. You will have a pass once in a while, you will have this." And he says, "I will help you get a job, you need a job. Get you a night job." And throughout the tapes you will see he keeps checking on him. He says he spoke to a kid up there. He said, "you didn't live there." Why is Mr. Douglass checking on Hardy? He is checking on Hardy because it is his job. And he talks to him in a friendly manner saying, "listen, you have got to get verification. You've got to do this, you've got to do that." Now on the 21st Hardy tells you that he did something very interesting. He speaks to Twomey. He gives Twomey 50 bucks, he gives Twomey \$25 a week, or excuse me, gives him \$30 a week, Twomey says he can even give him less, but he gives him \$30. Offers him 50 and 30 a week, and right off the bat Twomey is taking it, indicating to you who is corrupt in that hotel, who is the one who has established this routine of people missing at night. And I submit to the jury once again just keep remembering Hardy had a 1 o'clock curfew, not given by Douglass but by Bouley, the chief case worker there, 1 o'clock curfew. It was not in the jurisdiction of Douglass. Douglass had very little contact with Hardy. As a matter of fact the only contact Douglass had with Hardy

are these transcripts, four or five times over six weeks,
is the total capital Douglass had with Hardy.

MR. IASON: Objection, your Honor, there is no
testimony this is the only contact. This is the only contact
we put in evidence.

THE COURT: It is the only contact put in
evidence.

MR. IASON: There is no basis for him to argue
that is the only contact.

MR. TURNER: There is basis for my argument.
No, he talks to him on one day, the following day. The
next time he speaks to him a week later or something. He
will refer back to something that he spoke to him the
last time. What was the last time? The first tape. For
instance he says, "I got to get a list." He tells him how to get
a list. He says, "you got to go to Bouley." The next week
or two weeks later you speak to him. He says "Oh, yeah, I
am still going to take care of that list business" the
list indicating to you that the last time he spoke to him
was two weeks ago. You can tell from reading the tapes
that the continuation of the conversation is from one week
to two weeks later. That's evidence. That's proof. It is
all here. You can get this out of these transcripts.
He meets with him a minimum amount of times because his

1 case worker really is Twomey, because his restrictions
2 is from 1 o'clock for six hours thereafter. That's his
3 restriction, and the only man that has to be reached
4 as far as he is concerned, is Twomey. And when he says
5 he can reach Twomey and he must have known he could reach
6 Twomey from the moment he goes there, it must have been
7 obvious to him, and that is when he got this big idea, "I
8 can get out of jail. I can get Twomey in trouble," the whole
9 bit, and then he is -- he gets into this thing. He gets
10 more and more information but I submit to you Twomey
11 is the corrupt one. Twomey is the only one he sees.
12 Twomey is the only one who can do anything for him. By
13 the way, La Froscia says that he didn't know Twomey.
14 I ask you to consider that also another inconsistency
15 in his statement. How he could possibly not know the man
16 who worked there at night when he was there, he said he
17 was there before he even started this thing, so if that
18 was true he had to know in many ways the night man. It is
19 when he was there. Then later on he said, "oh, yeah,
20 Twomey, I know the name." Just another inconsistency,
21 another incredible statement made by the man, just
22 as Hardy makes incredible statements like the one he made
23 when he said "I am testifying in Brooklyn out of my civic
24 duty." If you believe that, you can believe anything.
25

1 mbh
2 The next time Hardy sees Mr. Douglass, according
3 to his testimony -- now Hardy has failed, he's failed
4 in trying to reach Douglass and he knows he's failed. He's
5 made up some story here in court that he had \$50 in his
6 hand but of course we have no evidence whatsoever of that
7 other than his testimony which as I said, you can find to
8 be so incredible that you can disbelieve everything
9 that Hardy said. You can find him to be -- that his
10 credibility is so lacking that you cannot believe what
11 he says and therefore we have no evidence if you disregard
12 his testimony.

13 He can't corrupt him. He tries. He goes in
14 again. This is something you should remember, you have
15 a man who you have already heard was responsible, trust-
16 worthy, did his work properly, and now you have a man
17 who goes in and tries to take that man who you know
18 to be proper and trustworthy according to Mr. Walsh's
19 testimony, and he tries to corrupt him, he tries to
20 make him do something he wouldn't do. He tries to make
21 an innocent man do something which would make him guilty
22 of something and you see that he has no predisposition to
23 do that. As you see in the tape from January 21st
24 you have hard evidence that he has no predisposition to
25 take money. There is no question about that. Up until

1 mbh
2 this point there is no question about that. I have also
3 disregarded all of La Proscia's testimony. I submit to this
4 jury you must do the same and you must disregard all that
5 testimony, especially the first offer which was some time
6 in January, so that even then all La Proscia's testimony
7 about February hasn't come yet; so you have here a man on
8 January 21st and February 3rd who has shown you he has no
9 disposition towards any corruption whatsoever, and that this
10 Mr. Hardy is trying to get him to do something corrupt
11 which he would not have done if it were not for the
12 corrupting techniques of Hardy, the finagling.

13 On February 3rd when Hardy meets with him,
14 Hardy meets with Douglass again, hasn't seen him all this
15 time, Hardy knows he's got to get some headway. After
16 all he is living in a \$550 room, he's got to make headway.
17 He's got to start getting some proof or fabricate some
18 proof which he does, and I submit you can see this on
19 February 3rd. He says -- he goes in there and first of
20 all they discuss rent. Douglass tells him he's got to
21 pay his rent like other residents in the place and they
22 discuss rent, and Hardy doesn't want to be bothered with
23 this, "Oh, yes, do I owe you 10, 12? Do I owe you 14?"
24 He is not too clear what he is paying there but there is
25 a long discussion about rent. Remember that Walsh said

1 there was a responsibility of Mr. Douglass to collect
2 rent. Very important statement. Obviously, I mean, money
3 has to be passed between residents and Mr. Douglass. I
4 want you to keep remembering that his responsibility
5 is to collect rent. He says, Douglass tells Hardy that
6 he is always behind in his rent and he's got to get up
7 with it, and I submit he stays behind in his rent as you
8 will see later. He tells Hardy again no such thing as
9 a program, no such thing as getting out of here. Reiterates
10 it, and this is the second meeting with him, and still
11 this guy Hardy keeps pressing him and he still keeps
12 telling him "what's the matter with you," but he is doing
13 it in a case worker conversation, he says "there is no such
14 thing as that. You can't do this. You can't do that.
15 You have to pay rent. You have to be here." Hardy makes
16 an outright offer. Again he refuses. Douglass refuses.
17 He offers it again, he refuses again, he offers again,
18 he refuses again. He talks about checking on an address
19 in Spring Valley, showing that Douglass is checking on
20 this man, making sure that he is fulfilling the regulations
21 that are required by the residents.
22

23 And he gives Hardy a pass, which is the first
24 pass we talked about. The second pass is on the 27th.
25 This is back on February 3rd. He gives him a pass. There

1 is no money here. There is no money given to Douglass
2 for a pass. He checks on him, he talks about rent, he
3 does his work, and he gives him a pass because he lives
4 in Spring Valley.
5

6 Now he's refused \$50 twice. Keep that in mind.
7 And just to go over the testimony he says that -- on
8 the tape he says "Well, you paid \$10 the week before last,
9 the last week you owed me 14, now you are up to 14 again."
10 Then they go on. Hardy says "I can pay it, there is
11 no problem" and then Douglass says "You were behind when
12 you paid that, see," and he says "Oh, I didn't realize that."
13 Then he makes his offer, he says "This definitely is --
14 it is just if you say -- I mean I got \$50. If you say
15 the word you got it. There ain't no problem. I appreciate
16 it, you done me a couple of favors." Who did what favors?
17 That is Hardy's testimony. He says "He did me a couple of
18 favors." There is no evidence of any favors. Douglass
19 refuses, he says no.

20 The next meeting they have is February 6th.
21 Now twice, twice Hardy has made an attempt and he's been
22 unsuccessful. Now comes February 6th. He's got to make
23 some headway, he's got to do something so he presses even
24 harder but now Hardy is an experienced man in using
25 these tape recorders because he's doing these things, he

2 tries ' get information, he tries to use deceit, he tries
3 to get things done even if they can't be done and he can
4 make it look that way. That is what he does here. He knows
5 if he is away from Douglass he can't be heard. He tells
6 you he is very familiar with it. You heard his testimony.
7 There is no question he knows what a Kel is, what a Nagra
8 is. He knows and he knows if he is not hearing the subject
9 he is trying to record you won't hear his response, and I
10 ask you to look at the tape and look at it where money
11 is being offered, why the entire tape, the entire tape is
12 audible, you can hear everything that is being said until
13 money is offered and all of a sudden there is no response
14 because Douglass is not there. He is not even close to
15 him. He is all the way the other side of the room. He
16 might even be out of the room as far as we know.

17 Look at it, listen to it. There is no response.
18 Why is it? Why is it there is no response at that critical
19 time? Because Douglass is using the deceit, the cleverness
20 that he uses in trying to deceive people.

21 THE COURT: You mean the witness? You said
22 Douglass.

23 MR. TURNER: I'm sorry, Hardy, Hardy is trying to
24 deceive this courtroom and he is trying to deceive the cops,
25 he is trying to deceive the United States Attorney, all

2 because he knows he's got to produce. If he produces then
3 he gets what he wants.

4 Now on 2/6 he talks about the pass. That is not
5 a different pass, that is the same pass they talked about
6 on February 3rd. He's asked him to sign it here. The
7 same pass that he had already agreed to give to him on
8 February 3rd.

9 There is plenty of opportunity on February 6th
10 when he makes this offer of money, plenty of opportunity
11 for him to get that money and put it in his room so that
12 when it goes back to the police officers he doesn't have
13 the money. The only case that you have that money is
14 accepted by Douglass is that when Hardy sees the police
15 officers he doesn't have the money any more but we don't
16 have any evidence what Hardy did with the money. I mean
17 this guy is a crook, if you give him money what is he going
18 to do with it? He is going to keep it. There are
19 plenty of pauses in these tapes. He is only three doors
20 away, a distance of myself to this witness chair. It's
21 one second to go into his room and put away money or give
22 it to anybody. Cops aren't there to see it. All they
23 know is they sent him into a building with money, he
24 comes out, he doesn't have it. Absolutely no evidence of
25 anything being given.

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2 Now Hardy on February 6th in transcripts he
3 is trying to get across, he is trying to trap Douglass
4 but he can't. He says "Right, I figure that it doesn't
5 matter that I sign in, does it?" And Douglass says "Yes,
6 it does." It does matter he sign in. Hardy says "No, no,
7 that's fine. That's fine. That really is. Let me give you
8 10 for the pass. I mean you know for the Sunday thing I
9 really appreciate it then." Inaudible. We don't hear
10 any response. Not only don't we hear any response but
11 Hardy goes on after that. No response by Douglass whatsoever.
12 You see, and I want you to watch this in these transcripts,
13 these transcripts are not evidence, these transcripts
14 indicate that Hardy says something and there is a 'D', and
15 that means Douglass,
16 /and it says one second inaudible or unintelligible.
17 And then it says Hardy, that doesn't mean that Douglass
18 answered. Douglass may not even be there. Don't be confused
19 by the fact that the answer can't be heard, there may
20 not be an answer at all. The fact that is there means nothing,
21 and this is not evidence. Listen to the tapes and see
22 for yourself, you will find that Hardy has made an offer
23 and then Hardy goes and starts talking all over again
24 as if it is the same sentence without even requiring
25 an answer. He goes on after making this offer, no answer,
 "You know seriously then, I will take care of you. I will

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take care of whatever business because listen, I definitely don't want nothing for nothing. I really appreciate it." Then "D inaudible." Unintelligible. Why is the whole tape audible until you get to this critical point? Because he is across the room. And then Hardy goes on "Thank you very much." And if you listen to the tape it is all Hardy. And then what's the answer to that? Two-second pause. No answer by Douglass, we don't even know where he is at this time, he can be having a conversation with himself in the room. We don't know. He'd have you believe he is talking to Douglass. Now two-second pause, enough time for him to get back in the room, okay, then, "I will just leave you now until Thursday." All of a sudden, he's made this long talk, we don't know who is there, he may be in his own room but a couple of seconds he is back in his room which is all it takes to walk from the witness stand to the defense table, and then all of a sudden a completely different subject. "Okay, okay, I will leave you now, till Thursday."

I submit to you there is no evidence here of anything being taken. It's Hardy's maneuvering. That's all it is, no acceptance whatsoever. The government has failed to prove beyond a reasonable doubt there was an acceptance. They fail to prove it, there is evidence he

1 didn't take it. Reasonable doubt, reasonable doubt, you
2 must keep saying to yourself, can I give myself a reason
3 that I have this doubt? And you do. There is no acceptance.
4 There is no statement by Douglass. That should give you
5 doubt. The kind of person Hardy is that he is not even
6 in the room should give you doubt.
7

8 By the way, this is \$10. He says that Douglass
9 refuses \$50 and then all of a sudden for no reason whatso-
10 ever all of a sudden he takes \$10? Is that credible?
11 A week later, Hardy tries again, and I contend to this
12 point he hadn't even gotten near home and if you take my
13 inference that he has not given Douglass any money to
14 this point, which is obvious, then it becomes obvious
15 again when Douglass hears the statement about money,
16 he says no, no, and he keeps refusing again. Is it plausible
17 that he would accept \$10 on the 6th, and on the 13th
18 keep refusing again as he did two times before that; or is
19 it more plausible that on the 6th there was no conversation
20 between him and Douglass but only a conversation with himself
21 to deceive? In other words, these tapes are not
22 corroboration of anything, and if you can't corroborate
23 that witness, you can't believe anything because his
24 testimony is not believable.

25 Now the 13th is also a critical day because the

13th is a day that Mr. Kaufman had discovered that six people including Hardy are not there. It is the first time that Douglass is made aware, as Mr. Walsh tells us the system, through this book, he comes in, he sees that Kaufman has reported six people missing, and Douglass takes action. Douglass puts Hardy on restriction. A man who has been bribed, is this person going -- is this the action of a man who is being given lenient treatment? Or is this proof, further proof that Douglass is doing his job, and the only time he could possibly know about it is when Kaufman came in? It is a good thing that Kaufman came in. He explains the restriction to him. He says Hardy says he gave him consideration, he gave him three hours off. He didn't give him three hours off. Hardy says "I can't come in because of my job" and all Douglass tells him is "if you can't come in, you call up the center and you tell them your job prevents you from being there." He didn't tell him "okay, you don't have to come in until another time." He told him to call and make arrangements. He continually says "I don't want the money" when he makes the offer on this date the 13th of February, he says "I don't want it, I can't do anything for you." This man has been persistent from the 21st until the present with the exception, I think, of the 6th since I don't think

Douglass even heard him. He is persistent, he keeps offering money and Douglass keeps saying no. He says he'd have to be crazy to take money.

He goes into his room again, there is a pause, he has plenty of opportunity to go into his room and get rid of that money. He comes back in. I want you to read this February 13th transcript and say to yourself: Is this transcript the answers made by Douglass consistent with someone accepting money or consistent with someone who has refused money? And by the way, I am indicating to you and I am proving to you through these transcripts that no money was accepted. The burden of proof is on the government. They must show beyond a reasonable doubt that money was given to Douglass. They must show it beyond a reasonable doubt. And if you find that this evidence is so showed that it raises reasonable doubt in your mind, and that men and women using their own common sense would find that it showed evidence and not worthy of belief, and does not live up to proof beyond a reasonable doubt, you must acquit, but I am showing you, I am showing you beyond that that there is refusals, there is refusals.

He talks about Hardy says he had to go see Walsh. And he tells him that Walsh said yeah, he knows he knows,

1 he said "We will let it slide this time." Walsh the superior
2 has told him the excuse that he gave for not being there
3 the night before, we will let it slide. That is what he
4 tells Douglass. Whether that conversation actually takes
5 place, by the way, we don't know. I mean Hardy with his
6 fabrications could have fabricated that too. But one thing
7 is for sure, Mr. Douglass didn't know whether it is true
8 or not. Hardy says to him, Mr. Walsh said, we will let
9 it slide. So as far as Mr. Douglass is concerned, he
10 thinks that his own boss has let it slide. Yet Mr.
11 Douglass put Hardy on restriction and kept that restriction.
12 Now if you believed that Walsh would let it slide he could
13 have taken him off I mean, if he is accepting bribes
14 but he is doing his job. The man is on restriction.

16 Now Hardy during this conversation, no money
17 is talked about but all of a sudden Hardy says, "Hey,
18 just let me get my key to my room for a minute, excuse
19 me." Right on the transcript before anything is done
20 Hardy excuses himself again. Into his room. Where is the
21 money? In his room. Comes back after it and he starts
22 up the conversation about money. "I just appreciate it,
23 take this 50 because you saved my ass, man." Now there
24 is unintelligible, there is an unintelligible answer. They
25 have written down "I know". I ask you, on this occasion

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to listen, you cannot hear it. My own interpretation of what I hear was "I don't want it." But I ask you because it is your interpretation of what's said there, but there is no answer. If there is an answer, it's "I don't want it." But I think you will find because it is very, very hazy, that -- and obviously proving that Douglass is nowhere near here at the time, that there is no answer if at all. And then Douglass says later on, "I can't do nothing else for you." Now they make a big deal, he says, nothing else for you. He says, just a sentence here "I can't do nothing for you." "I can't do nothing else for you, nothing for you." He repeats it. "I can't do nothing for you." By the way, just to cover a point that Mr. Iason brought up, he said, it is not like it used to be in this institution, that Douglass keeps saying, it is not like it used to be. Under the old boss there, which is not in evidence here, we don't know what that old boss permitted and didn't permit. Now passes and overnights are given. Here you have Walsh. I submit to you that the rules and regulations, under the old boss, may have been much more lenient. In fact we know from the conversations we have heard that under this new regime, under Mr. Walsh, things are much tighter and I submit to you that when he says things aren't the way they used to be it merely means

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2 that under the old regime whoever was boss there, things
3 were much more lenient and passes and overnights could be
4 given out more liberally; not that he did something which
5 was incorrect which the United States Attorney by some
6 inference wholly out of the sky would have you believe.
7 There is no evidence of that. He just says, it is not like
8 it used to be. That doesn't mean he can't let people out.
9 It just means that maybe overnights and passes may have
10 been given more liberally. He says, I can't do nothing
11 for you. Douglass says to Hardy "I can't do nothing
12 for you."

13 Now Douglass repeats his refusal, "I'd rather not
14 take this, Hardy, I don't need it." This man keeps pushing
15 money in his face and he keeps on refusing it. Hardy is
16 trying to corrupt him. And now he tells him after he
17 keeps on being persistent with this money, he finally gets
18 down to it and says, "Listen, I have been told by Mr.
19 Bouley to give you certain lists, see, I mean, because
20 while you are here you understand." He is telling Hardy
21 that he knows why he is there. Which just indicates
22 to you again if a man knows why he is there, that's a
23 paid informant, would anybody, anybody in his right mind
24 accept money? It is just proof to you that he didn't. Then
25 he tells him yes, Douglass tells him so that is the only

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2 reason you have the 1 o'clock curfew to start with. He
3 tells him because of Bouley it is the only reason you have
4 the 1 o'clock curfew. Not because of him. He is not taking
5 credit as Mr. Iason would have you believe that he is doing
6 things for him. He tells him the only reason you have
7 a 1 o'clock curfew even is because Bouley gave it to you
8 and it is right there in that transcript.

9 I ask you to pay strict attention to those pauses,
10 those pauses are really important because we have no way
11 of knowing where that money is going except by Hardy's
12 testimony which I tell you and which I ask you is absolutely
13 incredible based on everything you heard from him, his
14 background, you cannot believe that, so the only thing
15 you have to go by is the tapes and we don't know by the
16 tapes or the fact that he went in with money what he did
17 with it. All we do know is that Douglass refuses it and
18 refuses and refuses it.

19 The following day after this conversation, after
20 Hardy tells you on the stand, he tells you that he gave
21 him money, which obviously is not supported by the transcript,
22 he tells you the following day that he told Twomey that
23 he had nothing going with Douglass. Hard evidence for
24 you to disregard all these transcripts or the inferences
25 that the United States Attorney would have you believe

1 from the transcripts because the transcripts don't say
2 anything. Hardy told Twomey, I don't have anything going
3 with Douglass. Now how does Hardy explain that? He tells
4 you, "The FBI told me to say that." Then I push him, I said,
5 "Who in the FBI?" Gives me five names, practically names
6 every officer who you heard in this case. So we don't know
7 who told him. All we know is that each one told him. He
8 has a long conversation and he says he doesn't have
9 verbatim questions or answers to ask but he's told. He
10 was never told to make a specific statement that Douglass
11 had nothing going with Twomey; or that Hardy had nothing
12 going with Douglass to Twomey. What difference does
13 it make? Twomey according to Hardy's own testimony had
14 accepted money from him on the 21st of January. What
15 possible motivation could Hardy have in saying to Twomey
16 a month later after taking bribes like crazy, that Twomey
17 has taken who knows how much money, what possible motivation
18 would Hardy have for saying "I have nothing going with
19 Douglass?" How is that important in this conversation
20 with Twomey?
21

22 I submit to you that that statement,
23 admitted to you by Hardy, is the truth, and he had to admit
24 to it because it is on a transcript. And if that statement
25 is true, then everything he said about what went on before

the 14th is a lie. He never gave him any money. He said, I have nothing going between me and -- nothing going between me and Douglass. Reasonable doubt. A statement by the witness inconsistent with what he said on the stand before that, inconsistent with an interpretation of tapes. Reasonable doubt. He said, "I have nothing going with Douglass." Which brings us up to the 25th. As soon as Hardy comes into the room on the 25th he reprimanded him. He tells him, "you better fly straight. You better start doing things right around here." Is that consistent with a man who is being given bribes? He says "You are going to be released in two weeks." Mr. Iason tells you that being released in two weeks means "let's see if we can't shape up for the last two weeks." Mr. Walsh tells us that as the person gets closer to his release date things get a little more lenient. You got to get him back into society, actually take him back into the job, and society, that this Halfway House was structured to do. And so he tells him, he had two weeks to go, fly straight, follow the rules, he is being lenient with him. He says Mr. Iason says look at Hardy's sheet, you see a couple of times Douglass signs it. Obviously Douglass has to sign it a couple of times, the pertinent dates Mr. Iason points out are the only dates he sees Douglass. He is Twomey's

1 man. The four or five times that we have testified to
2 here are the times when Douglass sees him, so therefore
3 Douglass' initials will appear because he sees him. He
4 is not even supposed to be there until after 1 o'clock.
5 But he comes in 9, 10 o'clock, and so he has to sign in
6 and Douglass has to initial those sheets. Hardy makes
7 excuses on this transcript on the 25th. He's telling
8 why he did this and why he did that. Does a man who has
9 given money to anybody have to make excuses? Again Hardy
10 seems to disappear before an offer is made. Again there
11 is a pause and Hardy is gone. What did he do with the
12 money? He says take this, there is no acknowledgment by
13 Douglass. All Douglass says is "You better behave, you better
14 start behaving." He keeps telling him that he has two weeks
15 left. When you look at these transcripts and see his
16 responses, does that sound like a man that's been bribed?
17 He just keeps telling him to fly straight. And all of
18 a sudden Douglass seems far away. I will read you the
19 transcript pertinent parts, "See what I mean so fly right
20 for two weeks ha ha and then you will be on the street,
21 and then you can do anything you please. You know
22 what I mean?"
23

24 He is telling him to keep up the rules. These
25 reprimands because as we heard he's done something wrong.

1 So he is reprimanding him, he is telling him to fly straight.
2 Hardy says, "I don't know what the book said" and Douglass
3 tells him it said three and then he makes an excuse.
4 No, actually I signed in, it was 2:15 or 2:45, I don't
5 remember. But Douglass is checking on Hardy, he keeps
6 checking on him to make sure he doesn't do anything. All
7 of a sudden on the next page we have a 15-second pause,
8 enough time for Hardy to get rid of the money again.
9 Every time. Where is Hardy? Now he comes back; and then
10 Douglass says, "like I said, fly straight. You'll have
11 no problems." And then again we don't know what's happening
12 here, the silence. And then Hardy after the silence
13 again he makes his offer, "here take this, Mr. Douglass;"
14 and he tells him this doesn't seem like a response to
15 a man who has just been offered anything. He says he is
16 coming down hard and he is really looking at Hardy. I
17 don't even know if he is talking to Hardy. He may be
18 talking to somebody else but he is not responding to
19 an offer of money. He says "take this, Mr. Douglass." We
20 don't even know what he is giving him if he is giving him
21 anything. In the past he says here is 25, or here is 10
22 for you. All of a sudden "take this, Mr. Hardy." What does
23 that mean? And again he alerts Douglass, alerts Hardy
24 to the fact that he's got to fly straight, keep himself
25

1 behaved. Now Hardy says "There's 25 there." Now Hardy makes
2 a statement, "there's 25 there." And then nothing, no
3 response to the money, and then Hardy immediately says
4 "Okay listen." Like he's changing the whole subject.
5 We don't know if Mr. Douglass heard him say here's 25
6 or what he's even referring to. We certainly don't know
7 if he gave him money and I submit based on everything
8 you have heard before refusal after refusal after refusal
9 that this is not the place for anybody to start taking
10 money. We know that Douglass knows that he is not going
11 to take money, and again at the end of this tape he
12 again says "And don't --" he told him he has two weeks
13 to go, and he tells him not to louse up your parole.
14 You see what I mean?
15

16 He is again telling him not to violate the rules.
17 Is that consistent with a person who has just taken money?
18 And Hardy doesn't go back to his officers and say "okay,
19 he accepted the money, let's go arrest him because how are
20 you going to, Hardy didn't give me money," so they don't
21 make an arrest on the 25, so Hardy tells him whatever
22 excuses he wants but he tells them let's go, let's go on,
23 because Douglass has no money. He hasn't given him any
24 money. Now the 27th comes. The 27th is a very important
25 date. Mr. Iason is basing his whole thing, he says the 27th

1 we found money on Douglass, and therefore he must have been
2 accepting this money.
3

4 On the 27th he gives him a second pass; over a
5 six weeks period he gave him a second pass. No mention
6 of money, he gave him a pass. He's only got a week to go,
7 two weeks to go. He tells him he can have that one day
8 off because he is going to Spring Valley and he tells him
9 "the only reason I am giving you this pass is because you
10 live in Spring Valley" exactly as Walsh told you he can do.
11 Now the 27th is a very unclear tape. We have two pages.
12 All of a sudden Hardy comes in, he has a very brief
13 conversation, and the only reason it is as long as it is
14 is as soon as he comes in Douglass says to him "I am going
15 to give you a pass this weekend," no provocation, no nothing,
16 tells him he is going to give him a second pass and immediately
17 Hardy comes in, he's got to make sure now, this man hasn't
18 done anything. He knows that if he doesn't get money across
19 to Hardy, to Douglass, that he is in bad shape so he drops
20 \$25. He says, "there's 25." He says, "there's 25" and he
21 leaves. You know in all the other tapes, Hardy raps,
22 he talks to him, goes on and on, even after an offer is
23 made. In fact Hardy from his behavior you can see he is --
24 and as I have submitted to this jury that he is not even
25 in the room comes back and talks to Douglass some more.

2 All of a sudden for the first time he comes in, drops
3 \$25, doesn't say "it is for you," he doesn't say "hey, here's
4 \$25 for you," he says, "here Mr. Hardy, that's 25."

5 Tha 's 25 and he leaves. What is that \$25?

6 Do we know what that \$25 is? Of course we know what that
7 \$25 is. Detective Erwin took the stand, Detective Erwin
8 told you that not only did they give him money for rent,
9 excuse me, money to give to Douglass but they gave him
10 money for rent. Money for rent. His rent was due.
11 The 27th he had to pay his rent. How far was he behind?
12 We don't know. We don't even hear anything about
13 rent before. Could Erwin have given him money before
14 for rent and he didn't pay? He could be \$25, he could
15 be \$50 behind in his rent. He drops the money down, on
16 the desk and says "there's 25." Now ask yourselves, where
17 does that rent money go? The administrative office is
18 only open from 8 o'clock to 4 o'clock in the afternoon
19 where the safe is. Mr. Douglass is going to leave the
20 money in a room with whatever number of inmates, residents?
21 Mr. Douglass takes the money home to be turned in the
22 following day. That's rent money. How do we know it is
23 rent money? Detective Erwin told you it was rent money.
24 Why didn't Hardy go in there and say, "here's the rent money
25 and here's \$25 for you?" He is an experienced informant.

1 This man told you about his experience. He knows he's got
2 to separate money. He could have gone in there and said
3 "Here's \$25, \$15 for the rent and this is \$25 for you."
4 There would be no question then, would there? But Hardy
5 is sure now that Douglass won't accept any money. He knows
6 he won't take a bribe. He's tried now how many times
7 to make him take a bribe. He just drops the money and
8 walks out and tells us what was a bribe. But Mr. Douglass
9 doesn't know what's going on. He doesn't know this guy
10 has been trying to act as an informant for him. He
11 knows he is an informant but he don't know what's going
12 on here. He thinks it is the rent money and you know he
13 thought it was the rent money because Erwin told you it
14 was due, it was rent day. And obviously when they arrest
15 Mr. Douglass, he has the rent money. Because it is -- they
16 arrest him immediately after he leaves. That money can't be
17 turned in to Mr. Walsh until the following day. And you know
18 from Mr. Walsh that it is the responsibility of Mr.
19 Douglass to collect rents. Reasonable doubt. Reasonable
20 doubt. Can you -- does that raise a doubt in your mind
21 which you can attribute a reason to? Rent money. My God,
22 it should prove to you that it is rent money. I ask you
23 and each one of you to use your common sense, I am asking
24 you to use the common sense you used in making decisions
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2 in your everyday life. I am asking you with that common
3 sense that you bring with you to say yes, the government
4 hasn't proved the guilt of Mr. Douglass beyond a reasonable
5 doubt. This whole case is fraught with reasonable doubt.
6 La Froscia is incredible; Hardy is incredible, the tapes
7 don't say anything. There are inconsistencies. There is
8 no acceptance. Reasonable doubt. The defense has no
9 burden. I have to prove nothing to you. The Judge will
10 tell you what the law is. He will tell you that my client
11 is presumed to be innocent. It is the burden of the
12 government to prove my client's guilt beyond a reasonable
13 doubt. I have to do nothing, Mr. Douglass has to do nothing.
14 We can sit back and say "prove my client's guilt beyond a
15 reasonable doubt" and if he fails to do it, you must acquit;
16 and I submit to you that's exactly what's happened here.
17 My client pleaded not guilty. He said "I didn't do it."
18 The government has failed to prove that he did beyond
19 a reasonable doubt.

20 Even if you were to believe, even if you were
21 to believe that money passed between Hardy and Douglass,
22 and I am not in any way saying that happened, I am telling
23 you that didn't happen, I am telling you that from these
24 tapes you must conclude it didn't happen, but even if
25 you were to believe that money passed, you see refusal after

1 refusal, the 21st, the 3rd of February, you see refusals.
2 You must believe even if you believe money passed, you
3 must believe that Hardy corrupted Douglass, you must
4 believe that he entrapped him to do what he says he did.
5 And I ask you to listen to the Judge when he charges you
6 on that; because even if you believe that you must find
7 my client not guilty; you have evidence that he would
8 not have done it if it were not for the corrupting tech-
9 niques that Hardy did. You can't believe -- the only pos-
10 sible thing you can say to yourself is La Froscia,
11 La Froscia some time in December, some time in January,
12 you can't believe La Froscia, he don't know whether it
13 happened in December or January the way it happened.
14 It is completely incredible. You must disregard La Froscia
15 as not being credible and not being established beyond
16 a reasonable doubt and as soon as that happens, as soon as
17 that happens, even if you believed Hardy which is incredible,
18 that money passed, it can only be as a result that Hardy
19 corrupted Mr. Douglass, and that is impermissible. But
20 I reiterate to you, as Mr. Iason said, it is outrageous
21 that men with these records should be permitted to do
22 what they say they did. He has impeached his own witnesses
23 when he says that men with those records are the men he
24 is counting on. Those are the men he is saying you must

believe.

Ladies and gentlemen, this case is fraught with reasonable doubt. The government has failed to prove the guilt of my client beyond a reasonable doubt. I ask you to deliberate in this case, to find these inferences, and to come back with a verdict of not guilty.

Thank you.

THE COURT: Are you prepared to proceed?

MR. IASON: Yes, your Honor. Can I have just one minute, your Honor?

THE COURT: How long do you anticipate being?

MR. IASON: 10, 15 minutes, as an estimate.

THE COURT: For your information, Mr. Iason, it is my intention to submit the first of the patterns of verdict but not the second.

MR. IASON: Yes, your Honor.

MR. IASON: Ladies and gentlemen, you have listened very attentively while we lawyers have put on a case. The government has put on its case, Mr. Turner has cross-examined. I have made a statement of what the government submits the evidence shows. Mr. Turner has made his statements. I will try to be very brief now in replying to some of his points that Mr. Turner has raised. Mr. Turner artfully has explained an exculpatory

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CHARGE OF THE COURT

(Knapp, J.)

4 THE COURT: There are a few preliminary remarks,
5 ladies and gentlemen. In the first place, as you may
6 have become aware, the acoustics in this room aren't the
7 best in the world, and sometimes when I refer to notes,
8 I tend to drop my voice and if I should do that please
9 any of you who don't hear, raise your hand or in some way
10 indicate that you are not hearing, and I would appreciate
11 that if counsel for either side felt that either they
12 or the jury weren't hearing, call my attention to it.
13 That obviously is not my purpose.

14 What I shall do is, as I indicated yesterday,
15 lay out what I believe to be the law, and then I shall
16 excuse you while counsel for either side has an opportunity
17 to suggest corrections or make amendments or anything
18 they think that should be different, and I just mention
19 that now because when you go out this time I am going to
20 caution you not to begin forming opinions until you have
21 heard my final comments, because it is my intention ob-
22 viously to give it to you right the first time; but I am not
23 infallible any more than anybody else is, and it is quite
24 possible that one counsel or the other will suggest a
25 material difference that might have a material effect on

your deliberations.

The outline of my charge is going to be first I am going to give you general doctrine that applies to all cases, and then I will come down to the law applicable to this particular case.

As to general doctrines, in the first place, as I have told you before, it is you who must weigh the facts. Nothing that I may say about the facts or that you may conceive that I think about them has any relevance whatever. It may surprise you that I don't have to tell you that. Under federal law I have the power, if I wish, to exercise it to tell you exactly what I think about the facts and what I think about the credibility of the various witnesses just so long as I make it clear to you that you are not bound by my views on the subject. Why do I tell you that if I don't intend to exercise that power? Simply for this reason. I want you thoroughly to understand that it is my profound conviction that the jury system only works if, indeed, the jury totally disregards what the judge thinks or what they may think the judge thinks about the facts. I am just telling you that I have the power to do otherwise just so you won't think I am saying that because of some sort of a formality I have to meet. It is not. I am saying that because it's my

1 profound conviction that unless you follow that particular
2 instruction, justice may not be done in this case. As finders
3 of the fact you will, of course, be the judges of the
4 credibility of the witnesses. There is no mystery about
5 how you judge the credibility of witnesses. Every day in
6 your life you have occasion to judge the credibility
7 of people who come before you; and talk to you. Everybody
8 who speaks to you wants you to believe what they say by
9 and large. Otherwise they wouldn't bother saying it, and
10 every day in your life you deal with your family, business
11 associates, with your competitors, people you meet in
12 the street, and they ^{say} things to you, and you either believe
13 them or you don't believe them. But the point is over your
14 lifetime span you begin to develop certain criteria, an-
15 tenna. You don't figure it out, you just automatically
16 react to certain things and you begin to develop these
17 criteria and antenna for sizing people up and deciding
18 whether you are going to believe them or not going to
19 believe them, whether you are going to act on what they
20 say or not going to act on what they say.

21
22 This theory of the jury system is, and I certainly
23 agree with it, is that it is perhaps much better to have
24 an important fact decided by a group of 12 people who have
25 12 varying antennae and criteria than it is by one person.

1 For example, if I had to decide the case or if any one
2 of you had to decide the case, you or I would have only one
3 set of life experiences to go by, our own. As it is you
4 have 12 such sets and the law thinks, and I agree with it,
5 a more proper result is likely to occur if you pool your
6 common experience in deciding the facts in a given situation.
7 That, of course, only works if you do what the law con-
8 templates you are going to do, namely, discuss the case
9 with each other with an open mind, exchange views with
10 an open mind, so that each of you can get the benefit
11 of what the rest of you think.

12 Incidentally, in your function in this regard,
13 it is the rule that your recollection of the facts controls.
14 What I may remember or what counsel may remember is wholly
15 immaterial. It is your recollection that controls and
16 if you have any question about it, if you want any testimony
17 read back, you can always ask the stenographer to read the
18 pertinent testimony back; but then it may surprise you
19 to know that even if, when you hear the stenographer read
20 it back, if your recollection differs from his as to what
21 was said, your recollection has to control. If, having
22 given due regard for his expertise, you conclude that your
23 recollection is different than what the record discloses,
24 you just have to conclude that the stenographer made a
25

1 mistake. The point is we are all fallible, I am fallible,
2 he is fallible, and you are fallible; but the law has to
3 place the responsibility somewhere, and the law has placed
4 that responsibility with you. You have the responsibility
5 for know what was said and what you believe.
6

7 The law does give you certain guidelines. One
8 is that you are entitled to take into consideration^{the} interest
9 any witness may have in the outcome of this action. The
10 defendant claims that the government witnesses had motive
11 to falsify, which I will refer to later, and that you should
12 regard them as interested witnesses. The point is that it
13 is for you to say whether and to what extent any witness
14 has interest in the outcome of the case, and if so, whether
15 and to what extent such interest influenced his testimony.
16 Obviously you just don't reject a witness out of hand because
17 he may have an interest; but you consider the extent
18 of the interest and decide what effect, if any, it had on
19 the testimony. Isn't that what you do in everyday life?
20 Most people have an interest in what they say, as I indicated
21 earlier. Otherwise they wouldn't bother to say it; and you
22 over your life experience, develop these antenna that I
23 talk about for evaluating the interest in evaluating what
24 is being said to you.

25 With respect to the witness La Froschia there

2 is a related consideration that comes into play. According
3 to his own testimony this witness is guilty of some of the
4 very crimes charged against the defendant. The law calls
5 any such person an accomplice a man or woman who could be
6 convicted of the very crime that is on trial. Of course
7 in this case it isn't the exact crime. The
8 witness according to his own testimony was guilty of giving
9 the bribe; but the same act constitutes the crime so the
10 principle comes into play. The law says that you are
11 entitled to act on the testimony of such a person but that
12 you must subject it to special scrutiny. That is plain
13 common sense. Obviously any person subject to prosecution
14 for crime may either have or think he has an interest
15 in ingratiating himself with the government by testifying
16 on the government's behalf. Obviously it is more comfortable
17 to be on the witness stand than at the defendant's table.
18 Therefore the law says, and it is plain common sense, that
19 you should take those factors into account in weighing the
20 testimony of such a witness; or the law also says that
21 if after having taken those factors into account, you come
22 to the conclusion that the witness has given truthful
23 testimony, i.e., substantially accurate testimony, you may
24 act upon it exactly as you would upon that of any other
25 witness.

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2 With respect to the witness Hardy, similar
3 considerations apply; although not an accomplice he has
4 told you that his purpose in undertaking this investigative
5 activity was to ameliorate his parole situation. You have
6 heard the arguments, of course, on these issues and I don't
7 propose to review them. The point is that with respect
8 to those witnesses, indeed with any others, it is your
9 responsibility to consider any hopes they may harbor in
10 their breasts or any pressures they may feel under in
11 determining the extent, if any, such hopes or pressures may
12 have affected their testimony.

13 However, once you have decided if you ever do
14 decide that any or all the testimony of such a witness is
15 factually accurate you may, and indeed you must, act on
16 such factually accurate testimony.

17 Let me emphasize that the background or motive of
18 any witness is relevant solely on the question of whether
19 or not he is telling the truth, giving an accurate description
20 of the facts as they actually happened in this case. Once
21 you have determined that a witness is telling the truth, if
22 you ever do so determine, you would violate your oath of
23 office if you declined to act upon his testimony just because
24 you disapproved of the witness or something about him. Similar
25 considerations apply to the tape recordings. As I explained

1 to you earlier, the use of these devices in the manner
2 described in this case is entirely legal. This is so
3 essentially because Michael Hardy, who was a participant
4 in the conversations, consented to have them recorded.
5 Accordingly the use of these devices was proper investigative
6 technique. That doesn't mean that you disregard the arguments
7 as to the accuracy of tape recording which you have heard
8 by the defense counsel; nor does it mean you disregard the
9 arguments that the prosecutor gave you as to the accuracy.
10 These tape recordings are like any other evidence. You
11 appraise them and you act on them if you find them to
12 be reliable. My only point is you would be violating your
13 oaths of office if you gave them any less credence because
14 you said you didn't happen to like that way of getting
15 evidence. Whether you like it or not, whether I like it
16 or not, is wholly irrelevant. You remember I discussed that
17 with you when you were being selected. We are here to deal
18 with the evidence, we are not here to pass judgment upon
19 how the legislature has told us the evidence shall be
20 produced.
21

22 To get back to generalities, there is another rule of
23 general application which is that if you find that any
24 witness who has testified before you has deliberately lied on
25 a material matter, that is, a matter important to the issue

2 before you, you may, if you wish, reject and disregard
3 everything that particular witness has said, but you are not
4 required to do so. You may reject the part of his testimony
5 that you find to be untruthful, and accept and act upon such
6 part as you find truthful. Now again, that is just common
7 sense. In your ordinary experience, some people may have
8 told you a lie and you say to yourself "I am never going
9 to believe anything he or she may say again. Life is just
10 too short to be bothered trying to sort out the truth or
11 falsehood so far as that particular individual is concerned";
12 or on the other hand you may have some person has told you
13 even some outrageous lie consider the motives which caused
14 the person who lied and conclude in the future to believe
15 him if you find such motives not to exist. Like everything
16 else you act in the same common-sense way that you would in
17 your daily lives.

18 Remember that this rule applies only to testimony
19 that is wilfully false. It has no application to mistakes,
20 and again that is just plain common sense.

21 Now the next, perhaps and certainly the most
22 important question, rule of general applicability to all
23 cases is the rule respecting reasonable doubt. In a civil
24 case all plaintiff has to do is to establish his case by
25 what is called a preponderance of the evidence, which boils

down to mean that it is more likely than not that what the plaintiff has asserted is true. If it is, the jury is entitled to give plaintiff its verdict. That may be fine and indeed it is fine where all that is involved is whether A should pay B some money, but one of the purposes of the government in bringing a criminal case is to authorize the court to commit the defendant to jail. Our liberties wouldn't be worth much if it were possible to put a man in jail simply because his guilt seemed more probable than his innocence. Therefore the law says that guilt must be established beyond a reasonable doubt. There are two words in that definition, reasonable and doubt. The meaning of doubt is self-apparent. The word reasonable in the last analysis is equally self-defining. It means a doubt for which you can give a reason. It isn't just a fanciful doubt or an excuse for ducking a disagreeable duty. Nobody likes to be in the position of convicting a fellow human being, but the law would also be in a sorry state if jurors wouldn't take the responsibility for finding guilt where it is established beyond a reasonable doubt.

Also, the "reasonable" part of the term goes to the essence of jury deliberations. If one of you has a doubt and expresses a reason for it, and another juror has no doubt, the expression of your reason for your doubt will

probably do one of two things: it will either enable your fellow juror to demonstrate to you that your doubt is unreasonable, or enable you to demonstrate to him or her that he should have -- he or she should have a doubt. That, as I say, is the essence of the jury system.

If you express your doubts or lack of them to each other you should be able to resolve them one way or the other. Of course, a doubt like everything else, a reasonable doubt must be weighed on the evidence or the lack of evidence, not on something you may have heard on the outside or some impression or opinion you may have derived from the outside. It has to be based on the evidence or lack of evidence. Otherwise how could you discuss it with your fellow jurors? All that you have in common with each other is what you hear in this courtroom; and it is that common basis upon which you must base your deliberations.

In this connection, I may point out that while it is your duty to discuss your doubts or lack of them with each other, and listen to each other's views, you should adhere to any conscientious opinion which you might hold and not give it up merely for the sake of unanimity. I don't think I need say anything more about that. The law simply requires you to do your best to convince your fellow jurors of the correctness of your views, and at the same time to

listen with an open mind to theirs, and make a conscientious effort to reach a result which conforms to the conscientious belief which each of you holds.

I assume that you are not going to start unanimous. Unanimity comes from a discussion among you, an exploration of your doubts or lack of them, and a discussion of the evidence or lack of evidence on which there is doubt or lack of it. That's how unanimity is achieved.

Before I leave the question of reasonable doubt, it being so important, let me read another definition that was given by a judge for whom I have great respect. "It is a doubt based on reason," he says, "which arises from the evidence or lack of evidence in the case. It is a doubt that appeals to your reason, to your judgment, to your common understanding, and your common sense. It is a doubt such as would cause you to hesitate to act in matters of importance in your daily life, but it is not caprice, whim, or speculation. It is not a doubt that a juror may conjure up to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. Let me repeat, it is a reasonable doubt." That ends the quotation.

As you see, it doesn't much differ from what I said before, but I just thought he said it rather well.

Closely related to this doctrine of reasonable doubt

2 is the concept of the presumption of innocence. That means
3 that the government has the burden in this case and that
4 such burden never shifts. I have told you that the de-
5 fendant doesn't have to prove anything. The point is that
6 the presumption of innocence continues in his favor throughout
7 the entire trial, and remains there in the jury room until
8 you have finally resolved it, if you ever do, by a verdict
9 of guilty.

10 It means this: right up to the last minute your
11 discussion should include the proposition that the government
12 has the burden and if the government has ^{not} sustained that
13 burden, that in itself can be the basis for a reasonable
14 doubt.

15 In connection with the presumption of innocence
16 let me remind you of what I told you when you were being
17 selected and what I again emphasized right after the
18 defendant had announced that he rested his case. Defendant in
19 deciding to rest his case without himself taking the stand
20 was exercising a right give him by the Constitution of the
21 United States. For reasons I explained to you, unless you
22 respect that right and refrain from speculating as to why
23 he exercised it or what he may have said, the defendant
24 will not have had a fair trial. I think I need say no more.

25 I have several times mentioned the division of

responsibility between me and you. One result of that division is that you should have no concern with what punishment might be imposed on this defendant should your verdict be guilty. That is my responsibility. I trust you to deal with the facts, and you must trust me to deal with any responsibility your verdict may impose upon me.

I mentioned to you that the indictment in and of itself is no proof of anything. You remember I discussed that question with you in great detail when you were being selected.

So much for the general rules that apply to all cases.

Now the charge in this particular case is extremely simple. The government charged the defendant Allan B. Douglass, who concededly is a public official, to wit, a correction counselor at this federal Halfway House that you have heard about, intentionally, wilfully and knowingly accepted certain sums of money from two individuals named La Froscia and Hardy in return for improperly doing them favors in relation to his official duties; namely letting them out nights and giving them weekend passes. If you are satisfied beyond a reasonable doubt that he did that on any of the occasions mentioned in the indictment you should convict him with respect to the counts referring to such occasions. If, on the other hand, you have a reasonable

doubt on the subject, you must acquit him. By way of clarity let me isolate the elements of the crime which you must find in order to convict.

First, the defendant must be a public officer. That's not disputed.

Second, you must find that he accepted moneys from La Froscia and Hardy or from either of them. That, of course, is hotly disputed.

Third, assuming you find beyond a reasonable doubt that he did accept such money, that such acceptance influenced him in his official duties, i.e., induced him improperly to give favors in the future to these witnesses or accepted that money in return for having given improper favors in the past.

And too, as I have indicated, the act must have been done intentionally, knowingly and wilfully. An act is done knowingly if it is done knowingly and purposefully, not because of mistake, accident, or mere negligence, or any other incidental reason. An act is done wilfully if, in addition to having been done knowingly, it is done deliberately and with an evil motive or purpose. Of course evil motive or purpose is something you don't see on a chart. A man doesn't go around putting a sign on, "Now I have an evil motive or purpose." That is not how you find out what is

inside a man's mind. You decide whether or not he had an evil motive or purpose by looking at everything that you believe that has been said about his activities, and decide whether all those activities, all the evidence that you believe about his activities satisfies you beyond a reasonable doubt that his motive or purpose acting as he did was evil within the terms as I am defining them to you.

Applied to this case, the question you ask yourself, assuming you have found that he accepted the moneys from La Proscia or Hardy or either of them, is, did he accept such moneys with full awareness that he was acting in breach of his trust as a public officer by taking money from inmates in return for improperly exercising his official powers in the inmate's favor. So that's what the case is all about, the alleged breach of the public trust, and that is what lends it peculiar importance, both from the government's point of view, and from the defendant's point of view. Looking at the government's side of the question, then what could be more important/preventing a correction officer, correction counselor from accepting bribes from and thus teaching corruption to the very persons he is supposed to counsel? And that in turn creates the importance of the case to the defendant, because what would be more horrible than to be falsely accused let alone convicted of such a charge. The defendant has

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has urged the defense of entrapment. Let me start off by saying that the word entrapment is altogether misleading. It suggests there is something wrong about trapping a criminal. Well, obviously that is exactly what the FBI, the United States Attorney, the city police, the Department of Investigation, indeed all law enforcement agencies are supposed to do, they are supposed to trap criminals. But, on the other hand, what they are not supposed to do is to ensnare or induce otherwise innocent people to commit a crime. Such improper snaring or inducement is described in the law by the artificial word entrapment. So the question raised by the defense of entrapment is simply this: Did the government, acting through Mr. Hardy, and Mr. Hardy was concededly acting for the government in his dealings with the defendant, did the government acting through Mr. Hardy induce the defendant to commit a crime which he was not otherwise predisposed to commit? That the government is clearly not entitled to do. Or, on the other hand, did the government merely give the defendant an opportunity to continue a course of action upon which he had already embarked; the government using Hardy only as a means of insuring the defendant would pursue his illegal activities in such a fashion that he could be caught and prosecuted?

That is precisely what the government is permitted

to do.

Let me just go over that once more. The question is this: Did the government, acting through Mr. Hardy, induce the defendant to commit a crime which he was not predisposed to commit? Or, on the other hand, did the government merely give the defendant an opportunity to continue a course of action upon which he had previously embarked, the government using Hardy only as a means of insuring the defendant would pursue his illegal duties in such fashion that he could be caught and prosecuted? The government has the burden of proof on this issue. The defense of entrapment having been raised the government must establish to your satisfaction beyond a reasonable doubt that the defendant was predisposed to commit the particular crime charged in this indictment. Here the evidence upon which the government relies to meet its burden is the testimony that Mr. La Froscia gave money to Mr. Douglass before Mr. Hardy did; Mr. La Froscia, of course, was not a government agent at the time of the events in issue and that aside from that, even if you don't believe that, the government contends if you don't believe that Mr. La Froscia had given him money before, the government contends that the defendant's actions when Mr. Hardy was dealing with him in and of themselves indicate his predisposition

The defendant, on the other hand, contends that Mr. Douglass did not take money at all from La Froscia and that any taking of money from Mr. Hardy was a result of Hardy's over-persuasion of a theretofore innocent man.

On the issues so framed the government must persuade you beyond a reasonable doubt either that Mr. Douglass first accepted money from Mr. La Froscia, who was not a government agent, or in the alternative, the government must persuade you beyond a reasonable doubt that when Douglass accepted the money, if you find that he did take such money from Mr. Hardy, Mr. Douglass was then a person predisposed, ready, willing and able to engage -- ready and willing to engage in the illegal activities which are the subject of this charge.

In deciding that issue, about defendant Douglass' predisposition or lack of it, you will take into account everything you know about the man. What Mr. La Froscia said about him to the extent that you believe it, what Mr. Hardy said about him to the same extent, and your interpretation of his words and conduct as disclosed in the tapes.

Those, ladies and gentlemen, are according to my present belief, the essential principles that you must know to dispose of this lawsuit.

I will now excuse you for a while. When you

2 come back, I will, in any event, give you certain house-
3 keeping details and certain technical information which I
4 haven't mentioned as yet and I will also make any changes
5 or recommendations as I have told you that counsel may
6 suggest and then I will submit the case to you for your
7 consideration.

8 And when you come back would the alternates
9 bring with them anything from the jury room so they don't
10 have to go back, including their lunch if it has arrived.

11 (The jury left the courtroom.)

12 THE COURT: First the defendant.

13 MR. TURNER: Yes, your Honor.

14 THE COURT: Suggestion, exceptions?

15 MR. TURNER: Yes, your Honor. I didn't mention it
16 before because I thought the Court having mentioned it itself
17 would do it but I'd like the Court to say something about
18 defendant's character.

19 THE COURT: What about his character?

20 MR. TURNER: Well, there is character testimony
21 in a way. That is, Mr. Walsh gave testimony concerning
22 his character.

23 THE COURT: I don't think that was character
24 testimony.

25 MR. IASON: Your Honor --

2 THE COURT: He wasn't asked for his character
3 for anything. He just asked whether he was a good --

4 MR. TURNER: He wasn't asked his reputation for
5 truthfulness and veracity which is the usual character testimony
6 but he did say he was responsible, did his work properly
7 and was efficient.

8 THE COURT: I don't think --

9 MR. TURNER: And he had high regard for him.

10 THE COURT: If you asked me for that in advance
11 I would have tried to work it in appropriately but I
12 don't think it is available and I don't think it would
13 be proper to do it now.

14 MR. TURNER: Would your Honor consider this.
15 You said when they consider whether Mr. Douglass was
16 predisposed to accept the money or be bribed, you can
17 consider La Froscia's testimony, Hardy's testimony, would
18 you also say you might consider Walsh's testimony with regard
19 to his attributes.

20 MR. IASON: Your Honor, Mr. Walsh's testimony
21 did not go to that issue at all.

22 THE COURT: Yes, it did.

23 MR. IASON: Not as to whether he would accept bribes.
24 Not as to the question of integrity or honesty which is
25 the issue here and your Honor, if I may --

THE COURT: I will say that.

MR. IASON: Your Honor, if counsel --

THE COURT: Wait a minute. Don't get so excited. I haven't mentioned La Proscia and Hardy. I will say that I didn't mean to exclude any other witness. If they know anything any other witness had to say on that issue was relevant they can consider it. I improperly excluded Walsh from that.

MR. TURNER: Would you specifically mention Walsh?

THE COURT: Walsh is the only other witness. I won't specifically mention him and I won't mention what he said but it is perfectly obvious that nothing that the--

MR. TURNER: Just that knowing juries although there is no testimony about it they may consider you talking about the law enforcement officials. There is no basis for that but --

MR. IASON: Your Honor, if your Honor were to charge as Mr. Turner is asking you to do, that would take the question entirely out of context and at this stage give the jury a completely --

THE COURT: I made a mistake and I am going to correct it. I have told them they can consider those tests and those two witnesses.

MR. IASON: Very well and I think if your Honor

2 has done it as your Honor mentions --

3 THE COURT: That is what I am going to do.

4 MR. IASON: If you mention Mr. Walsh by name.

5 THE COURT: I will say the other witnesses, Mr.
6 Walsh and the two police officers.

7 MR. IASON: Detective Erwin and Sergeant Powers

8 THE COURT: Two police officers.

9 MR. IASON: I think respectfully, your Honor,
10 if you are going to mention Mr. Walsh by name you mention
11 Detective Erwin and Sergeant Powers.

12 MR. TURNER: Their testimony is not even relevant.

13 MR. IASON: It is relevant to whether he got the
14 bribe.

15 MR. TURNER: Not the question as to bribes.
16 This is relevant as to whether there was entrapment.

17 MR. IASON: Mr. Turner could have made this
18 point in written requests as the rules require. He didn't
19 submit any and I think it is too late to bring this up.

20 THE COURT: What I am going to say is Mr. Walsh
21 and the two other police officers or the other witnesses,
22 two police officers.

23 MR. IASON: They are Detective Erwin and Sergeant
24 Powers.

25 THE COURT: I can't remember police.

MR. TURNER: I would object to police officers.

THE COURT: All right. That is the end of the argument. Anything further?

MR. TURNER: Yes, your Honor. The last thing you talked about in great detail was entrapment and you properly so gave both sides and both contentions by the government and defense. However, I think the jury might be confused as to what the defense is contending because you said it is the contention of the defense that Mr. Douglass was entrapped. I want to make it perfectly clear that our contention was that there was no bribery at all, that there was no money taken but if they believed there was and then there was entrapment. It is an alternative defense.

THE COURT: All right, I will say that. I will just refer them to your summation. I don't know if it helps you any but I will do it. Anything else?

MR. TURNER: Is your Honor just going to refer the jury --

THE COURT: I will say, you remember it was his contention that he didn't take the money at all but if he was, he was entrapped. You heard the summation.

MR. TURNER: Would your Honor instruct the jury in the alternative, that the government must prove the taking of money beyond a reasonable doubt, as you already

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2 instructed?

3 THE COURT: No, I will just say, all I will do is
4 correct what I said, the contention is they were entrapped.
5 That is not an accurate statement. The contention is that
6 he wasn't entrapped but if he got the money he was and
7 it is correct then. I told them that.

8 MR. TURNER: The contention is not that he
9 wasn't entrapped. The contention was --

10 THE COURT: He didn't take any money.

11 MR. TURNER: Didn't take any money and if they
12 believe it was under an entrapment situation.

13 THE COURT: Yes, right.

14 MR. IASON: Your Honor, if you give these two
15 modifications, that's the last thing that the jury hears.

16 THE COURT: Don't worry about if it is the last thing
17 the jury hears.

18 MR. IASON: The government has to be worried about it.
19 I would simply request that if you say that the defendant's
20 contention is that he didn't take any money but that if he
21 did he was entrapped, the government requests that you put
22 it in the context of what the government contends.

23 THE COURT: I will say the government's contention
24 was that he was not entrapped and he did take the money.

25 MR. IASON: Very well.

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3 THE COURT: You are worrying about nit picking.
4 All I have done -- all I have to do is correct any technically
5 incorrect statement I made in the charge.

6 Anything else?

7 MR. IASON: No, your Honor.

8 THE COURT: Now, I assume there is no objection
9 to exhibits going to the jury.

10 MR. IASON: Not from the government.

11 MR. TURNER: No, your Honor.

12 THE COURT: The transcripts can't go to the jury,
13 they will come out here and listen if they want to hear.

14 MR. IASON: Yes, your Honor, unless Mr. Turner
15 wants them to have transcripts.

16 MR. TURNER: No, no, I would prefer that they
17 come out and listen.

18 THE COURT: I will explain the transcripts can't
19 go into the jury room. If they want to hear the thing they
20 have to come out here and play it. Incidentally, if that
21 should happen, would you have any objection to letting them
22 play with me being in the next room hearing motions?

23 MR. TURNER: I don't have any objection to that,
24 your Honor, your Honor. It is fine with me as long as you
25 are available.

THE COURT: Yes, I will be available.

Exhibits, transcripts, unanimous. All right, bring them back.

(In open court, jury present.)

THE COURT: Just a couple of matters which I don't really think change anything but at the very end I was talking about the entrapment defense, and I said you will consider everything that you heard about it, and I specifically mentioned you can -- I said you will take into account everything you know about the man, what Mr. La Froschia said about him to the extent you believe it, what Mr. Hardy said about him to the same extent. I was just using those as references. I certainly didn't intend to exclude anything else in the record. There were three other witnesses, Walsh and two police officers, and anything you thought any of those witnesses said, I wasn't intending to exclude. The mere fact that I mentioned these two doesn't mean that they have any more significance than anyone else. As I told you earlier in the charge, what I think about the significance of any witness is the least important thing there is in your life.

Also in the same connection, I told you that the defendant has asserted the defense of entrapment. Of course I wasn't trying to revise the summation. You heard the

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summation. The defendant said in his defense even if the money was paid he was entrapped. That is what I mean by the defense of entrapment. Of course the government contends that it's established beyond a reasonable doubt that it was paid and there was no entrapment. The defendant takes the opposite on both of those positions.

I just gave you a sample verdict.

You will notice that I have reversed it. Count 1 is a Hardy count and count 5 is the first La Froschia count. It seems more logical to me to consider them in chronological order.

You will notice I thought it was more logical to put it more or less in chronological order although technically number 9 comes last. But those are the counts that are submitted to you; and as to each count, you will have either a verdict of not guilty or guilty; and each count must be considered separately; because in considering each count you may consider all the evidence that you heard in the case, to the extent that you think it is relevant to the count that you are considering. The point is that there has to be a separate verdict as to each count and there is no necessary relationship between them. That is a verdict of not guilty in one count doesn't mandate a verdict of not guilty in any other count and a verdict of guilty in one count doesn't mandate a verdict of guilty

1 on any other count. Each count stands on its own feet because
2 considering each count you may consider all the evidence
3 that there is in the case that you think has any bearing
4 on that count.
5

6 Now, you will be able at any time, as I told
7 you during your deliberations, if you want any testimony
8 read back, all you have to do is ask for it, and we will ar-
9 range to have it read back. But don't expect instant replay,
10 because obviously a question that you ask wouldn't have been in
11 the mind of any of the attorneys when they were asking
12 questions, so that the answer to your question will, in all
13 probability, not be in any one place in the record, and
14 the attorneys will have to comb through the record with the
15 stenographer to find out where the appropriate testimony is.
16 Then they will have to agree on it if they can, and if they
17 can't, I will have to rule, and I may have to call you back
18 to get more information from you as to exactly what you want.
19 So don't expect instant replay, just go on with your
20 deliberations unless there is something that is just at
21 a standstill until you have the answer. Any time you want
22 an exhibit, you may ask for it, and it will be sent in.
23 Of course don't ask for it by number; you won't remember
24 the number. Ask for it by description. Of course, that
25 doesn't apply to the transcripts. The transcripts aren't --

1 they are exhibits but they are not technically evidence,
2 so if you want to hear a tape, what you will have to
3 do is just tell us what conversation you want to hear,
4 and then you will be brought back and you can hear the tape
5 and follow it on the transcript as you did before and decide
6 whether or not the tape is correctly reflected by the
7 transcript.
8

9 Now one thing I haven't mentioned yet which I always
10 mention at this time. Your verdict has to be unanimous.
11 There is no such thing as a ^{non} unanimous verdict in a federal
12 criminal case. On each of these counts, in order for there
13 to be a verdict, you have to be unanimous one way or the
14 other.

15 As I said to you, any time you want any further
16 information, don't hesitate to ask me for it; and if you
17 want any explanation of my charge, don't hesitate to ask
18 me for it. Remember I mentioned hangups. If you get any
19 hangup -- a professional man has his, he tends to slip into
20 professional jargon -- you have heard doctors talking to
21 each other about their profession, you can't understand
22 what they are saying. I try to avoid that when I am talking
23 to a jury but I can't be sure that I have, and it may be
24 that I have said things that seem perfectly clear to me
25 and to these gentlemen which don't seem clear to you. If

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that is so, have no hesitancy asking me either to repeat or

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to amplify. One thing, in any message you send out to me,

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don't tell me how you stand on any question. If you want to

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tell me you are deadlocked, 2 to 10 or any other number, that

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is all right as long as you don't tell me who is ahead.

7

When you think of it, the reason is obvious. Supposing you

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should tell me that you are deadlocked 10 to 2. If I knew

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who the 10 was for and who the 2 was for, there would be no

10

way, known to God or man for me to reason with you as to

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methods of how you should try to break that deadlock without

12

my conveying to the two that I thought they ought to go

13

over and join the ten because I thought the ten was right.

14

If you do deadlock it may be my responsibility to discuss

15

with you ways and means of dealing with a deadlock.

16

For all I know, if it's ten to two and I don't know which

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way it is then I am perfectly free to discuss with you ways

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and means of breaking up the deadlock without having any

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fear of putting pressure on the two because I don't know

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which side they are on. Therefore they have no reason

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to believe that I think they are right or wrong. No matter

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how much I tell you about my views of facts are immaterial,

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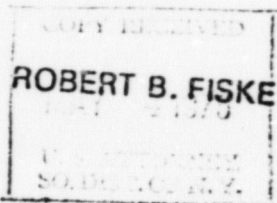
the fact is I am up here and you are down there and If

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I start reasoning with you, it can't help but have

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a pressure on the two if they know that I know what their



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2 position is and I am trying to get unanimity because they
3 are going to figure I don't think the ten are going to swing.
4 he wants me to swing over to them. But if they don't know and
5 if they know that I don't know, then I am not exerting any
6 pressure on them. So just bear that in mind.

7 All right, ladies and gentlemen.

8 (A marshal was duly sworn.)

9 THE COURT: I will commit you to the marshal's charge
10 with full confidence that you will do justice between the
11 United States of America and this defendant.

12 (At 1:35 P.M. the jury retired to deliberate.)

13 (The two alternate jurors were discharged.)
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